The
Madras Agriculturists' Relief Act

(ACT IV OF 1938)

BY

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PREFACE TO FIRST EDITION

More than three years have rolled by since the advent of the Madras Agriculturists' Relief Act. It has become a matter of daily dispensation in the ordinary course of administration of justice by Courts. Innumerable are the decisions that have flown out from the fountain-head of our High Court. By the constitution of a Special Bench for the disposal of all the cases cropping up under the Act, the stream of the decisions has been allowed to take a defined channel instead of diverse courses, likely to arise from the divergence of judicial opinion. It has been my humble endeavour in this book to bring the various decisions under their respective analytical heads, giving out, as far as possible, the general principles enunciated therein and the ways of interpretation adopted, with illustrations cited from the decided cases.

It is hoped that this book will be found of immense use to the Lawyers, the Litigant Public and the Judges as well.

18-8-1941. C. MALLIKARJUNA RAO.

PREFACE TO THE SECOND EDITION

Several intriguing questions arose in the matter of interpretation of the Act giving rise to various suggestions from the Judges as to amending the provisions of the Act since the publication of my first edition. Accordingly, Amending Acts XV of 43, XXIII of 48 and V of 49 were passed to remove the lacunæ existing in the Act. The passing of these Acts and the continuous growth of case law have necessitated the bringing of this second edition in order to place the changes and the construction of the provisions up to date before the Lawyer friends and Litigant Public. I hope the objective cherished from the utilitarian point of view in the preface of the first edition will attain its realisation by this second edition also.

May, 1949. THE AUTHOR.

SOME SELECT OPINIONS

His Lordship The Hon. Justice Horwill.

I have looked through your book with interest. There seems every reason to believe that the hope expressed in your preface that the book will be found of immense use to the Lawyers, the litigant public and the Judges will be fulfilled. It is very nicely got up.

The notes seem sound as far as I can see.

(Sd.) L. C. Horwill,
12-10-1941.

Sir V. Ramesam,
Retired Judge,
High Court, Madras.

'Gopal Vihar',
10, Edward Elliot's Road,
Mylapore.

I had an opportunity of perusing an edition of the Madras Agriculturists' Relief Act by Mr. C. Mallikarjuna Rao of the Masulipatam Bar.

An introduction gives a summary of the events that led to the passing of the Act itself. The notes under the sections are complete and brings the case law up-to-date. So far as I consider the law is correctly stated. An appendix containing the Madras Debt Conciliation Act and the Madras Debtors' Protection Act with rules made under these Acts, and the Usurious Loans Act, makes the book very useful. I have no doubt that Advocates and Courts will find the book very useful in dealing with the large number of cases arising under the Act for dealing with which one Bench of the High Court has been practically set apart.

(Sd.) V. Ramesam.

LLOYD'S ROAD,
ROYAPETTAH,
15th August, 1942.

JUSTICE B. SOMAYYA.

I have gone through some portions of Mr. C. Mallikarjuna Rao's Commentary on Madras Agriculturists' Relief Act, IV of 1938. The Act has given rise to several questions of an intricate and complicate nature and this commentary enables one to solve some at any rate of the questions.

The notes are lucid and well written.

(Sd.) B. SOMAYYA.

N. CHANDRASEKHARA IYER, JUSTICE.

96, MOUNT ROAD,
MADRAS,
23rd Nov., 1941.

DEAR MR. MALLIKARJUNA RAO,

I am very sorry I was not able to acknowledge receipt of your commentary on the Madras Agriculturists' Relief Act earlier. I have gone through the book here and there and find the annotations clear and the citation of the case law exhaustive. You have done well in adding in the same volume sister statutes, namely the Madras Debt Conciliation Act, the Madras Debtors' Protection Act, and the Usurious Loans Act. You deserve to be congratulated on the production of such a useful legal publication.

(Sd.) N. CHANDRASEKHARA IYER.

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INTRODUCTION

I

The prosperity of this province is dependent on the prosperity of its basic and cardinal industry-agriculture. It is admittedly true that agriculture has been particularly hit hard by the world-depression. It is incumbent on any government to give the agriculturist that measure of relief which would prevent his hereditary skill from passing into unemployment and thence to decadence and his land from passing into the hands of the non-agriculturists.

The Moratorium Bill of 1937.—To achieve these objects the Government, as a measure of temporary relief to agriculturists, introduced the Moratorium Bill which was published in the *Fort St. George Gazette*, Extraordinary, on 28-9-1937.

Objects of the Bill.—" The object of the Bill is to give temporary relief to indebted agriculturists in the province pending formulation of comprehensive measures for dealing with the problem of such indebtedness. The Bill will remain in force for one year; but power has been reserved to extend it for another year, if need arises.

The intention is to give relief to agriculturists who have a saleable right in agricultural land situated in the province and who derive not less than three-fourths of their annual income from such land. Relief will be confined to the agriculturists whose liabilities under the heads land-revenue, rents, taxes and cesses payable to local authorities do not exceed Rs. 400 per annum.

The Bill will not apply to certain classes of debts, for example, revenue due to the Government, Income-tax, loans granted by the Government and Co-operative Socieities, Land Mortgage Banks or Joint Stock Banks. Nor was relief given in respect of rent payable after 30th June, 1935.

After the Bill has come into force and so long as it should remain in operation, no suit or proceeding could be instituted against an agriculturist and pending suits and proceedings should be stayed."

It was also made clear that an agriculturist should not be entitled to transfer any immovable property so as to defeat the rights of the creditor. Special provision had also been made for giving relief to persons the major portion of whose assets consisted of debts due from agriculturists and which could not be recovered, while the Bill should remain in operation. In such cases the Court was to be empowered to give such persons the same relief as that given to an agriculturist by this Bill or such smaller measure of relief as the Court may consider sufficient.

The Bill also made provision for setting up, if necessary, an authority to dispose of matters arising out of the provisions of the

Bill and to make and issue declarations on the application of agriculturists or their creditors.

Power had also been taken to make rules for the jurisdiction over and conduct of proceedings taken before any such authority or authorities and also generally to carry into effect the provisions of the Bill, and to remove any difficulties which may be experienced in its working.

After the publication of the Bill, on the outpouring of voluminous criticisms of the severest kind from all corners and quarters, the Government replaced it by a new measure, THE AGRICULTURISTS' DEBT RELIEF BILL and published it in the *Fort St. George Gazette* on 1-12-1937.

The Agriculturists' Debt Relief Bill and its Statement of Objects.— The object of the Bill is as follows :—

The object of the Bill is to rehabilitate agriculture which is the basic industry of this province. Directly or indirectly, the prosperity of all sections of the people is dependent upon the economic well-being of the agriculturist. His present deplorable plight is well-known. While, on the one hand, his income has diminished, on the other, the interest upon his debt has been steadily accumulating, often at an unconscionable rate. The predominant feature of the distress is due to the burden of debt. It is the duty of any modern Government which is alive to its responsibilities to the people to relieve the producers of the people's food from such an intolerable burden. It would not be right for the State to permit the hereditary skill of the agriculturist to pass into unemployment, allowing land to fall into the hands of people who are strangers to the calling of agriculture. Conciliation and other voluntary methods have failed and the adoption of the principle of compulsion has become necessary.

The Bill provides that payment of the outstanding principal should discharge the debt. Interest will run from 1st October, 1937, at a rate not exceeding 6 per cent. per annum. In cases where high rates of interest are charged, payment of twice the principal is to have the effect of completely discharging the debtor, from further liability. As far as possible persons following occupations other than agriculture have been excluded from the benefit of the Bill. Dues to Government and local bodies and to co-operative and certain joint stock banks have also been excluded from its scope. Every endeavour has been made in drafting the Bill to simplify the issues and make them easy of decision, thus minimising litigation.

The Bill also provides for the relief of tenants from the burden of old arrears of rent without encouraging default in the payment of current dues.

Numerous complaints have been received that owing to the expectation of legislation on these lines, creditors have had recourse to coercive processes causing great distress among agriculturists, and

it is therefore proposed to give the benefit of the measure to debtors proceeded against since 1st October, 1937.

As a result of the vehement criticism levelled against this Bill a joint Select Committee of both the Houses of the Legislature was constituted on 21-12-1937 to consider the Bill in the light of public criticism.

The Report of the Select Committee.—This Bill was published in the '*Fort St. George Gazette,*' Extraordinary, in English on 1st December, 1937 and in Tamil, Telugu, Malayalam, Kanarese and Hindustani on 14th December, 1937.

The Committee met on 27th December in the Assembly buildings, Chepauk, and elected the Hon. Mr. C. Rajagopalachariar as its Chairman. It continued its sittings on 28th, 29th and 30th December.

The Committee has noted the various suggestions for improvement that have been made in the numerous memoranda submitted to it and in the light of those suggestions and of other criticisms which have been made, it has subjected the provisions of the Bill to a thorough scrutiny ; and as a result thereof has made many amendments therein.

Wiping out of Interest.—The Bill as introduced had provided that in all cases interest should run only from 1st October, 1937, at a rate not exceeding six per cent. per annum. The Committee has come to the conclusion that a distinction should be made between debts incurred during the pre-depression period when the value of money was very much less than now and debts incurred after the depression became acute.

In the case of the former greater extent of scaling down is considered justifiable than in the case of the latter. It has accordingly limited the provisions which had been made in the Bill for the wiping out of arrears of interest, only to debts incurred before 1st October, 1932.

As regards debts incurred on or after 1st October, 1932, the Committee thinks that the welfare of debtors would be sufficiently met by reducing the rate of interest to 5 per cent. in all cases where it is higher than 5 per cent. Where a debt incurred after 1st October, 1932, is found to be wholly or in part a renewal of debt incurred prior to that date that debt or any part of it which may constitute such renewal will be dealt with as debt incurred before 1st October, 1932, what has been compendiously described as the damdupat principle has been retained.

In view of the proposal for the reduction of interest, in the case of debts incurred subsequent to 1st October, 1932, the invoking of that principle is unnecessary in respect of such debts and has therefore been expressly provided for only in the case of debts incurred prior to 1st October, 1932.

The Committee considers that these provisions which it has made for the scaling down of old and new debts, will go a great length to meeting the objection which has been raised to the provision in the Bill as introduced for the wiping out of all interest on all debts

outstanding on 1st October, 1937. The Committee has also exempted from the operation of this Act any debt or debts due to a woman who is entirely dependent on such debt or debts for her maintenance and has accordingly included the following additional item in clause (4) of the Bill, *viz* :—

"Any debt or debts due to a woman who, on 1st October, 1937, did not own any other property provided that the principal amount of the debt or debts on such date did not exceed Rs. 3,000.'"

It has provided that in calculating the value of the property owned by the woman on 1st October, 1937, the house in which she lived or any furniture therein or her household utensils, wearing apparel, jewellery or such like personal belongings, should not be taken into account.

The Committee has also exempted any wages due to agricultural labourer or other rural labourers from the operation of the Act.

Foreign Companies included.—The Bill has provided that to obtain exemption from this Act a company registered in British India or in an Indian State should have had on its register on 1st October, 1937, at least 500 members.

This provision did not apply to foreign companies and the Committee has removed the distinction.

In view of the provision in the revised Bill in favour of debts incurred after 1st October, 1932, the Committee felt that there was no need to accept the suggestion made to extend the exemption to companies with smaller membership.

Arrears of Rent.—Another major change made by the Select Committee in the Bill is in regard to rents. Much apprehension was felt in certain quarters that the wiping of arrears of rent would encourage the tenants to allow rent to fall into arrears even in the future. In order to remove this apprehension the Bill had provided that the relief in respect of arrears should depend upon prompt payment of current dues. The Committee has strengthened this position by making the payment of the rent for fasli 1347 before 10th September, 1938, a condition precedent to the grant to a tenant of the relief from arrears of old rent. It is only where after paying the rent for fasli 1347 on or before 30th September, 1939, that he obtains a full discharge in respect of all arrears of rent accrued for previous faslis.

Safeguard against neglect of tenant.—If, having paid the rent for fasli 1347 on or before 30th September, 1938, he makes default in payment of the rent for fasli 1346 on or before 30th September, 1939, or pays only a portion of such rent on or before that date, he gets relief in respect of arrears for prior faslis only in proportion to the share of rent for faslis 1346 and 1347 paid by him.

These provisions, while helping the landholder to collect current dues are calculated to save the tenant against his own neglect.

Mr. G. Krishna Rao strongly pressed that in any case the arrears for fasli 1345 should not be written off. But the Committee after carefully considering the position decided that there would be no practical relief given to a tenant if the burden of three faslis was left unrelieved and that there would be no incentive for the payment of current dues if he is still to be left so heavily indebted.

Right of landholders.—The Committee has also provided that where a landholder has paid the tenant's share of the landcess under the Madras Local Boards Act, 1920, he would be entitled to recover the same. It has also provided that in cases where a landholder has already obtained a decree against his tenant for the rent due to him for fasli 1345 and prior faslis, he can recover the whole of the costs awarded to him by such decree.

As a corollary to the above-mentioned provisions, the Committee has provided that any payment of rent made by a tenant after the commencement of this Act shall be credited first towards the rent due by him for fasli 1347 and then towards the rent due by him for fasli 1346 and not towards any rent due for any prior fasli. It has also made a provision enabling the tenant to deposit the rent due by him into Court and to ask the Court to cancel his liability for the arrears of rent for previous faslis or to fix the extent of his liability under the provisions of this Bill.

The Committee has provided that the period of limitation for suits for recovery of rent for fasli 1345 and prior faslis should be extended by three months from the dates allowed for payment of the rents for fasli 1347 and 1346 as those dates would determine the tenant's liability for such arrears.

The more important of the other amendments made by the Committee in the Bill are referred to seriatim below:

Clause 3 (II): The Committee has included in the definition of "Agriculturist" sub-lessees of land either directly from a lessee or from an intermediate lessee.

Sub-Clause (IV): It has been made clear in this sub-clause that rent will include cases where a decree or order has been passed for it.

The Committee has also introduced a new definition, *viz.*, that of a "creditor" which will include heirs, legal representatives and assigns.

Provision for Hindu families.—Clause 5: This clause contains a special provision for undivided Hindu families who are assessed to any of the taxes which disqualify such family from being treated as an agriculturist. As originally introduced the Bill applied to Marumakkathayam and Aliyasantana tarwads and tavazhis. In view of the impossibility of obtaining individual partitions in such families the latter have now been excluded from this clause.

A corresponding exclusion has also been effected in clause 6 which relates to the case of descendants of non-agriculturist members of undivided Hindu families which are agriculturists.

Sub-clause 2 of clause 8 has excluded "usufructuary mortgages" from the operation of the damdupat rule. In view of the existence of certain other kinds of mortgages in which the mortgagees are in possession of the mortgaged property the Committee has substituted for the words "usufructuary mortgage", the words "any mortgagee by virtue of which the mortgagee is in possession".

The Bill explained.—The Premier, explaining the Bill, says: "The changes made have been set out in the report but the major one is worthy of elucidation once again. Debts in respect of which relief is sought to be given, have been divided into two groups, one incurred before the depression period and the other after the depression period. The first set of debts is treated in the manner in which the original Bill treated them or they are left in the same condition in which the original Bill dealt with them; that is to say, the modified form of damdupat continues to apply, and if a debtor such as is sought to be helped in this Bill, has paid twice the amount of the principal he has borrowed, in substance his debt is deemed to be discharged; and if he has done less than that, he has to pay only that much in order to get a discharge and in any event, in such cases, the principal is due and the interest is wiped out. The other class of cases, the later debts, that is, debts incurred after 1932, are dealt with in a different way. According to the amended Bill, 5 per cent. interest is charged instead of any higher rate that might have been charged in the original obligation, and all payments made are given credit and the debtor is to discharge only the residue. That was the change made in the Select Committee's Report. This is the major difference between the original Bill and the Bill as it emerged from the Select Committee.

"There have been minor alterations and some of them are of considerable importance. The revised Bill deals with the banks that were excepted and the Committee felt that the claim of the banks which were not excepted from the operation of the Bill were sufficiently met from the provision made as to payment of 5 per cent. interest, in regard to debts borrowed within recent times.

"Then with regard to the rent, the position was, even in the original Bill, that a tenant, if he desired to claim the benefits of this Bill in respect of old arrears, was bound to pay the arrears of the current fasli and of the previous fasli if he had been in arrears, so that the condition in the original Bill made it necessary for any tenant to be a prompt tenant in respect of payment of rent and prove himself as such before he could claim any write-off for ancient arrears. The Select Committee strengthened this position a little bit further and one more step was taken to make it necessary that the arrears for the current fasli of 1347 should be paid up before 30th September next in order that he might be entitled to any of the benefits of this Bill and that condition being satisfied, he was entitled to pay up the whole of the arrears for both faslis if any such existed, in order that he might claim the full write-off. Otherwise, he would be entitled to a write-off only in proportion to the extent to which he discharged his current liabilities, but it was rather an essential condition that he must dis-

charge fully the current year's obligation in respect of rent if he should ever come in at all for claiming any portion of the benefit. This additional condition strengthens the policy that was adopted in framing the provisions of the Bill, which as I stated was this: that it was to create a new psychology of conduct regarding payment of current dues and to prevent the continuation of the attitude of going into arrears year after year until the law compelled him to have his properties sold and other coercive measures were adopted against him. It was felt by the framers of this Bill that this would enable the landlord to have better tenants and enable the tenants to live better. This attitude of payment of current dues within the right time is an attitude which is very beneficial to all parties concerned and, if it is not prevailing now, that is due to the poverty of the people to a great extent and also due to the desperate condition brought about by the burden of previous arrears which makes them imagine that when probably there is no escape from the position, they need not worry about it at all. It was with this object that the write-off that was proposed by this Bill was coupled with what appear to be hard conditions as far as the tenant is concerned, but which in the long run were intended to help the tenant against himself, even as the write-off is intended to help the landlord against himself. The present change that I referred to which the Joint Select Committee made, strengthens it further by making a beginning absolutely necessary within a tangibly near point of time, namely, before the 30th September, 1938, the beginning being the entire payment of the dues for fasli 1347.

"Much apprehension was felt—at any rate even if it was not felt, it was raised as an argument—that probably all these measures would lead to a tendency not to pay the dues to the landlord and if you mix it with the present political tendencies, might lead to a difficult situation for the landlords. I submit, Sir, that the provisions that are enacted and the form in which the provisions have been made by the Select Committee which have further strengthened the same policy, must be enough to allay all apprehensions in this direction. This was another change which might be called minor, but I submit it is very important, because it strengthens the policy which must allay to some extent the apprehensions of those who are hit, so to say, by this Bill."

II

Adam Smith adumbrated the view that if freedom was granted to each individual to follow and advance his own interest, he would, by so doing, advance the interests of the community. On this was based the doctrine of *Laissez faire* (Let men do as they please) which held sway for a certain period. This doctrine which gave freedom for the poor and weak to make bargain with the strong and the powerful reduced the former to virtual slaves of the latter. The doctrine is now fast losing ground and paling into negation, and State intervention is now making incursions into the realm of private contract. The Usurious Loans Act, Debtors' Protection and Conciliation Acts are examples of State intervention.

The practice of money-lending and taking interest was not favoured in the ancient days. The Mohammedan Law prohibits the collection of interest, although an exception was found in favour of taking interest from 'infidels'. Passages were found in Vedas viewing this with contempt. In the age of Buddha, this was condemned. Manu stated that an usurer should never be invited for social functions. In the Gupta period (300 to 500 A.D.), interest was allowed not to exceed the principal. This rule of Damdupat was enunciated in the texts of Hindu Law. Interest was put down by Shakespeare as 'breed of barren metal'. Christian teachings also abhor the collection of interest. This led to driving away the Jews, the money-lenders from England in the days of Edward I.

As trade began to expand and a domain for investing money was discovered, interest as compensation for the use of money was allowed. Money-lenders began to grow usurious in their dealings. Although the Usurious Loans Act was passed in 1918, Indian Courts used to exercise Equity jurisdiction to set aside unconscionable bargains even prior thereto.

Agriculture is the chief staple of existence for 71% or 35 millions of our Province. The Government has granted certain facilities and concessions to agriculturists. The Agricultural Loans Act and Land Improvement Loans Act afforded relief to the agriculturist for purpose of improvements of his lands, purchase of cattle, seeds, etc. Certain belongings and implements of agriculturists are made exempt from attachment and sale in execution of decrees and his crops are exempt from attachment before judgment. All these measures did not suffice to prevent or preclude his running into debt. The agriculturist has found himself in the most deplorable plight since 1929 when the maelstrom of financial depression submerged the country with a catastrophical decline in prices. The Government passed Debt Conciliation, Protection Acts and established Marketing Boards. The Government further amended the Agriculturist Loans Act in 1935 by setting up a scheme whereunder Deputy Collectors were appointed as special Loan Officers in select areas for the purpose of granting loans to agriculturists directly. The scheme was tried in places not served by mortgage banks. All these schemes proved quite inefficacious in extricating the agriculturist from the quagmire of indebtedness and slough of despond. The state of things has not improved since Satyanathan's report of 1935. There has not been proportionate increase of the cultivated area despite the growth of population upto 53 millions. Agricultural indebtedness rose from 200 Crores to 220 Crores. Of the 35 millions, 7 millions are actual landholders, 76% of whom pay to Government assessment of Rs. 10 and less, 22·6% between Rs. 10 and 100 and 1·4% over Rs. 100. According to Dr. B. V. Narayanaswami Naidu, petty landlords owning less than 5 acres form 61.7%, intermediate ones between 5 and 25 acres 34·25% and big landholders with 25 acres and above 4·05%. Since petty landholders and landless labourers do not possess their own capital nor have

required credit, then most of the agricultural debt can be taken as due from medium landholders.

While on the one hand, his income has dwindled, interest on his debt has been rapidly accumulating often at an unconscionable rate. During the First Congress Ministry regime, the then Premier and the present Governor-General H. E. Rajagopalachari, the Pharos of South India, felt his duty to be alive to the responsibility of the Government to the people to relieve the producers of peoples' food from such an intolerable burden. It was felt incumbent on the Government to give the agriculturist that measure of relief which would prevent his hereditary skill from passing into unemployment and thence to decadence and his land from passing into the hands of non-agriculturists. To achieve these objects, the Act IV of 1938 was passed. The Act has given rise to numerous questions of intricate nature for interpretation. In the practical working of the Act, real, innocent and ignorant debtors could not get relief by falling into the traps laid by the creditors. Many are the debtors who could not get relief owing to the splitting up of their debts in the partition of debtors' or creditors' families owing to the interpretational results ensuing from the High Court decisions.

The Amending Act XXIII of 48 now passed, no doubt, contains some provisions for remedying the lacunæ and removing several anomalies in the Act. Agriculturists who earn larger income by other professions are sought to be enabled to be entitled to the benefits of the Act, by the limit of taxable income having been raised from Rs. 300 to Rs. 600. According to the new definition of 'Interest', payment in kind made in excess of the principal will also come within the scope.

Under the existing Act, woman creditors to whom small amounts are due and who own some additional property, however small it may be, be it a calf, do not get benefit of the exemption in their favour, whereas woman creditors to whom much larger amounts are due and who do not own any other property get the benefit of the exemption. This anomaly is sought to be removed, and the limit of their property is raised to Rs. 6,000.

In the actual working of the Act, one is drawn into the welter of helter-skelter opinions regarding appropriation of payments as to whether they should be towards principal or interest. Now it is sought to be clarified by providing that all unspecified payments should be credited to principal. Salutary provisions as to scaling down of debts incurred or renewed after the Act have now been made to afford real relief to agriculturists. The anomaly as to whether a renewal should be by the debtor or different debtor in favour of the same or different creditor is now sought to be removed. In several cases, ignorant and innocent debtors did not take the plea that the Act applied to their debts, and decrees were passed, and consequently they could not get relief of scaling down. It is a salubrious featur

that such debtors be given the benefit now. Usufructuary mortgages where no rates of interest had been fixed were outside the purview of the original Act. In order to bring in such cases also for relief, it is enacted that where for 30 years the mortgage had been in possession, the mortgage shall be deemed to have been discharged. Safeguards for bonafide alienees were provided. Owing to the peculiar feature of Kanom tenure, South Kanara and parts of Malabar Districts have been excluded. In order to give the full benefits of the amendments, made in favour of agriculturists debtors, it is deemed necessary to enact a provision for setting aside sales and foreclosures ordered shortly before the Bill passing into Law. The Government should be congratulated on providing for retrospective operation of the Amending Act. Such are the salient features of the Act.

I would like to make further suggestions for affording greater efficacious relief to the agriculturist debtor. Several agriculturist debtors have entered into contracts of purchase of agricultural land by pooling their resources and savings and investing them therein and have been let into possession in part-performance of the contract. The S. 53-A of the Transfer of Property Act confers a substantial interest on such persons, provided they have taken possession and are willing to perform their part of the contract. The definition of agriculturist must be extended to such deserving cases also. Provisos existing now set up certain limits of house, property tax, Peishkush, Quit Rent, Jodi, etc., exceeding payment of which by an agriculturist otherwise qualified would exclude the benefits to him. Already the plea of Benami is allowed by Rule 7 so far as house and property taxes are concerned. As benami transactions are not yet prohibited in our country, it is just and equitable that suitable provision be made to cover the plea of benami in cases of other categories of assessments also. Under the existing Act, stay of execution proceedings can be granted only till the disposal of the proceeding, for scaling down the debt and in case of appeal, it is in the discretion of the court. Thus an agriculturist is exposed to the risk of losing his property in court auction before the final adjudication of his rights by the appellate court. Stay must be made imperative in every case till the scaling down proceedings are finally disposed of and Restitution be granted in respect of the property caused to be sold in court auction to retrieve the debtor from the irreparable hardship existing in the Act.

In passing a legislation of this kind, one has to steer his way between Scylla and Charibdys. Suggestions as to wiping off the entire interest are only fantastic, as it would detrimentally affect the credit system. The very objective with which the Act was brought in the Statute Book is to rehabilitate the industry of agriculture which is the staple of existence of the bulk of the Province. So, any provision to be incorporated in the Act must work in that direction guided by the same objective. The debt which an agriculturist has to pay belongs to four classes, *e.g.*, firstly, the ancestral debt descending to the heirs, secondly the debt arising on improvident expenditure on

domestic matters; thirdly, debts that are caused by failure of crops, damage by storm and floods, and fourthly, debts accumulating on account of unconscionable rates of interest. To lessen the burden of second category of debts the agriculturist must himself meticulously follow parsimonious habits. To relieve the burden of the third category of debts, the Government must make a mandatory provision for relief as they arise owing to *Vis Major* (Act of God). The problem of agricultural indebtedness is inextricably interwoven with the agricultural regeneration and rehabilitation. An improvement in the prices of agricultural products is the essential desideratum. The Government may enact a provision to secure, by means of the formation of Rural Credit Corporations or Companies and the assistance thereof out of public funds, the advancement of loans to the agriculturist for agriculture on favourable terms and to facilitate the borrowing of money on the security of farming stock and other agricultural assets. Further, the Government should enact a measure on the lines of Bengal Money Lenders Act and C. P. Money Lenders Act which contain similar provisions of the English Money Lenders Act for canalising the money-lending in the Province by making a compulsory enrolment of the creditors as members of such Corporations or Companies which draw into its fold the Land Mortgage Banks, as is done in England on the lines of Agricultural Credits Act, 1928, thereby facilitating the working of the credit mechanism. The said societies should be entrusted with the task of realising the loans on which only 5½% p.a. should be allowed as payable under the Act. The creditor members will be given 4% on the amounts invested by them on shares, the remaining margin being kept for utilisation for the expense in running the said Corporations or Companies. By this process the dangers of private money lending will be averted and money lending takes a regulated channel recognised by Law. The Rule of Damdupat is already recognised in the Madras Conciliation Act (1936), the Bengal Money Lenders Act (1933), the Punjab Relief of Indebtedness Act (1934), and C. P. Money Lenders Act (1934), and the rule is administered as part of the Hindu Law in the Bombay Presidency. This rule must be made applicable to all the debts in our Province. Thus the credit mechanism will not be impaired but developed to a great extent as the method ensures a safe, simple, sure and cheap course for realisation of debts by the creditors through the recognized agency of the statutory bodies, and fetches interest to creditors at a rate higher than the one ordinarily granted by the banks. Further this cuts down litigation in that all frivolous pleas as to absence or failure of consideration, and non-genuineness of the transactions will no longer be tenable. Thus, the gloom encircling the agriculturist will break into a nimbus of Prosperity which will relume his path to Plenty and Peace.

THE
MADRAS AGRICULTURISTS' RELIEF ACT

(IV of 1938)

[11*th March*, 1938

An Act to provide for the relief of indebted agriculturists in the Province of Madras.

WHEREAS it is expedient to provide for the relief of indebted agriculturists in the Province of Madras; It is hereby enacted as follows:—

CHAPTER I

Preliminary

Short title. **1.** This Act may be called " The Madras Agriculturists' Relief Act, 1938."

NOTES

Object of the Act.—The object of the Act is to provide relief to the indebted agriculturists who form the vital part of the population of the province. The object is achieved by (1) scaling down their existing debts; (2) reducing the rate of interest on their future debts; and (3) writing off the arrears of rent, due to Zamindars, Janmis and other landholders.

Commencement of the Act.—The Act received the assent of the Governor-General on 11th March, 1938. In this Act no time is mentioned for its commencement. Hence, according to S. 5 of the Madras General Clauses Act (Act I of 1891), this Act came into operation from 22nd March, 1938, when it was first published in the *Fort St. George Gazette*, Madras.

Interpretation.—No difficulty as to interpretation of the Act arises in cases where its provisions are clear. When an enactment is unambiguous in itself the question is not what the Legislature has meant but what the Act has stated that it meant.[1] Then what is said and not what is intended to be said is to be construed.[2] The

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(1) *Subbarayalu* v. *Ranganatha*, 1938 Mad. 571 : (1938) 1 M.L.J. 530 : 1938 M.W.N. 376.
(2) *Henriatha* v. *Attorney-General*, 1930 P.C. 120 : 58 M.L.J. 300 (P.C.).

Court has to interpret the language used by the Legislature.[3] The grammatical and ordinary sense of the term should be adhered to unless that would lead to absurdity or repugnancy or inconsistency with the rest of the Statute.[4] It is an elementary rule that in construing Statutes every part of the language should be given its due meaning and a construction which fails *prima facie* to do this, fails to give effect to the intention with which the provision was drafted.[5] A difficulty arises as to construction when any provision is ambiguous and doubtful. As His Lordship Venkataramana Rao has rightly pointed out this Act is a piece of ill-drafted Legislation,[6] and several intricate questions for interpretation crop up. The Act is designedly expropriatory in its effect and the scope of its provisions ought not to be extended under the guise of what is called a benevolent construction.[7] If any doubt arises as to the meaning of its terms the doubt should be resolved in favour of the person expropriated and not of the person who claims to expropriate.[8] Courts should watch with a jealous eye attempts to have the scope of the Act extended under the colour of interpretation, beyond what its terms expressly warrant. Viewed from this angle this Act should receive a strict rather than a liberal interpretation, as this is a revolutionary measure that encroaches on the contractual obligations of the parties and thus confiscatory in nature. If the words of an enactment are clear and imperative, no considerations of convenience or hardship arise in interpreting them.[9]

Preamble.- When the language of a section is clear, it cannot be controlled or restricted by the preamble, but when the section is ambiguous preamble supplies the key to the mind of the Legislature and indicates what its intention was.[10]

A preamble cannot cut down the express provisions of a statute.[11] Courts cannot question the right of Legislature to go beyond what was stated in the preamble as the reason for the Legislature, for the Legislature may well have done actually a little more than what it started to do.[12]

(3) *Sheikh Kalesha* v. *Emperor*, 1931 M. 779; *Satyabala* v. *Sadharanee*, 58 Cal. 801 : 1931 C. 580.

(4) *Mercantile Bank* v. *Official Assignee, Madras*, 1933 M. 207.

(5) *Picha Pillai* v. *Balasundaram*, 1935 M. 442.

(6) *Srinivasachariar* v. *Krishnayya Chetti*, (1940) 1 M.L.J. 860 : 52 L.W. 295 : 1940 M.W.N. 329 : 1940 M. 485.

(7) *Varadaraja Pillai* v. *Krishnamurthi Pillai*, 52 L.W. 595 : I.L.R. 1941 M. 248 : (1940) 2 M.L.J. 664 : 1940 M.W.N. 1067 : 1940 M. 321 ; *Kotayya* v. *Punnayya*, 52 L.W. 176 : (1940) 2 M.L.J. 202 : 1940 M. 910 : I.L.R. 1940 M. 1023 ; *Palani Gounden* v. *Peria Gounden*, 52 L.W. 819 (821) : (1940) 2 M.L.J. 887 : 1940 M.W.N. 1247 : 1941 M. 158.

(8) *Varadaraja Perumal* v. *Palani Muthu*, 52 L.W. 772 : (1940) 2 M.L.J. 838 : 1940 M.W.N. 1189 : 1941 M. 118.

(9) *Gulam Md. Ali* v. *Corporation of Madras*, 1930 M. 200.

(10) *Mt. Rajpali* v. *Surju*, 1936 A. 507 (511) (F.B.).

(11) *Sutton* v. *Sutton*, (1882) 2 Ch.D. 511 (520); *Devidas* v. *Rupchand*, 49, All. 903.

(12) *Pamidi* v. *Junus*, 1936 M. 844 (848).

Agriculture and money-lending. *Contracts.*

Act intra vires and valid.—During the course of proceedings of discussion in both the houses of the Legislature it was pointed out that the Act is *ultra vires* as it encroached upon the provisions of the Indian Law of Negotiable Instruments which are only in the Federal List under the Government of India Act, but the question was not convincingly answered by the Premier and the question came before the Madras High Court which in its Full Bench decision[13] has held that the Act is *intra vires* the powers of Legislature and so valid, as it related to "Agriculture and money-lending" which are comprised in the Provincial List (List II). To the question whether the Act encroached on para. 28 of List I (Federal List) the learned Chief Justice said that the Act could be supported on the ground that it related to contracts falling within the Concurrent List (List III) of the Government of India Act, the Act having been assented to by the Governor-General as required by S. 107 of the Government of India Act, 1935.

Hindu Law.

To the contention urged that the Act militates against the principles of Hindu Law the learned Chief Justice answered: "The Provincial Legislature has power to legislate with regard to contracts and no exception is made in respect of contracts entered into by the Hindus".

Negotiable Instruments Act. *Usurious Loans Act.* *Principle.*

As to the contention that the Act touched the fringe of the Negotiable Instruments Act, being repugnant to the provisions thereof, the learned Chief Justice observed "the only object of the Madras Agriculturists Relief Act so far as Negotiable Instruments are concerned is to reduce the liability of the maker or endorser who is an agriculturist. In providing for this the Provincial Legislature was acting in the interests of agriculture (Item 20 of List II) and regulating money-lending to agriculturists. To the argument based on Usurious Loans Act, the Chief Justice has remarked that the fact that it affects agriculturists, discretion given to the Court by the Usurious Loans Act can make no difference to its validity. This decision was followed in a later decision[14] which went on appeal to the Federal Court.[15] The Federal Court declared that the Act was *intra vires* so far as decrees on negotiable instruments are affected. The principle enunciated in the Privy Council cases bearing on construction of the analogous sections of the British North America Act that in order to see whether an Act is in respect of a particular subject in the distribution of subjects between Central

(13) *Nagarathnam* v. *Seshayya*, 49 L.W. 257: (1939) 1 M.L.J. 272: 1939 M.W.N. 192 (2): 1939 M. 361: I.L.R. 1939 M. 151: 180 I.C. 994.

(14) *Subrahmanya* v. *Muthuswami*, 52 L.W. 240: (1940) 2 M.L.J. 170: 1940 M.W.N. 849: 1940 M. 890.

(15) *Subrahmanya* v. *Muthuswami*, 53 L.W. 109: (1941) 1 M.L.J. Supp. 1: 1941 M.W.N. 100: 1941 F.C. 47: 192 I.C. 225.

and Provincial Legislatures, one must look to the true nature and character and its pith and substance is equally applicable to India. The learned Chief Justice observes: "The pith and substance of the Madras Act, whatever it might be, could not at any rate be said to be a legislation with respect to negotiable instruments or promissory notes and it seems to me quite immaterial that many or even most of the debts with which it deals are in practice evidenced by or based on negotiable instruments. That is an accidental circumstance which cannot affect the question. I do not wish to be assumed that I accept in its entirety the view of the Madras High Court that the impugned Act does not affect the principles embodied in the Negotiable Instruments Act, for that proposition seems to me to be too broadly stated. It is doubtful whether any Provincial Act can, in the form of a Debtors' Relief Act, fundamentally affect the principle of negotiability or the rights of a *bona fide* transferee for value.

Federal Court decision—Decrees on negotiable instruments.

Bona fide transferee for value.

"Whether the Act should be declared as at least invalid in part in so far as it did or might affect pronotes, or it ought to be construed as not applying to pronotes at all, did not arise in the present case because the liability on which the Act operated was a liability under a decree of Court." The question therefore has not been answered by the Federal Court but left open.

Promissory notes—open question.

Act Intra vires : Pronotes.—As Ss. 7, 8, 9 and 13 offend against Ss. 32, 79 and 80 of the Negotiable Instruments Act, the Act is held to be *ultra vires* by the Madras High Court[16] following the view of Federal Court.[17] Then the Ordinance No. XI of 1945 was passed to validate the impugned Acts. The Privy Council has recently decided that the Bengal Money-lenders' Act is *intra vires* even though pronotes arise in money lending. The same reasoning applies to this Act and this Act is *intra vires* as it deals with diminution of debts of agriculturists and even if pronotes are affected, it does not matter as it is not the pith and substance of the Act. The decision of Federal Court,[18] regarding the validity of Bengal Money-lenders Act can have no application to a case relating to a mortgage debt in discharge of an antecedent pronote. Nor is the process of scaling down of the debt

(16) *Yegnanarayana Somayajulu*, v. *Subbarayalu*, 58 L.W. 190 : (1945) 1 M.L.J. 339 : 1945 M.W.N. 258 : I.L.R. 1945 M. 679 : 1945 M. 203.

(17) *Bank of Commerce Ltd., Khulna* v. *Kunja Behari Kad*, 1945 F.C. 2 : 1944 M.L.J. 269 : (1945) 1 M.L.J. 24 : I.L.R. 1945 Mad. F.C. 28 : 221 I.C. 351 : 1945 M.W.N. 92.

(18) *Prafulla Kumar Mukerjee* v. *Bank of Commerce Ltd, Khulna*, 60 L.W. 394 : (1947) M.L.J. 6 : 1947 P.C. 60. *Bank of Commerce Ltd.* v. *Amulya Basu* (1947) 2 M.L.J. 14 : 1947 P.C. 66 on appeal from the decision of Federal Court in (1944) 1 M.L.J. 178 : 1944 F.C. 18 : 212 I.C. 138 : 1944 M.W.N. 175 : 57 L.W. 212 ; I.L.R., 1944 kar F.C. 46.

affected by the fact that mortgagors were liable as sureties under antecedent pronotes which they discharge by executing a mortgage.[19]

Hindu Law and Contracts and Usurious Loans Act.—His Lordship Sulaiman, J., observes: "I however agree with the High Court that there is nothing in the Madras Agriculturists' Relief Act, which really conflicts with any provision of Hindu Law. . . . . I also agree that repugnancy to Contract Act is covered by the assent of the Governor-General, and further usurious loans came within money-lending any conflict with the Usurious Loans Act alone is immaterial." His Lordship Varadachariar states: "The Full Bench decision held that the Act is not invalid or inoperative even in respect of debts due under negotiable instruments, because in the opinion of the learned Judges it did not 'really affect the principles embodied in the Negotiable Instruments Act.' This statement seems to require some qualification. It is of the essence of negotiation (as distinguished from mere assignment) that a holder in due course must be able to recover the full amount due for principal and interest according to the apparent tenor of the document, and he cannot be called upon to inquire whether the executant of document or person liable was an agriculturist or not. If this right is negatived it cannot be said that the negotiability of the document has not been affected."

Holder in due course.

The question whether the Act is *ultra vires* of the powers of the Madras Legislature so far as promissory notes or negotiable instruments are affected having been left open by the Federal Court, the decisions of the Full Bench of Madras High Court holding that the Act is *intra vires* even in regard to pronotes and so valid, prevails.[20]

Extent.

2. It extends to the whole of the Province of Madras.

NOTES

Extent of operation of the Act.—The Act has been declared to extend to the whole of the Province of Madras. This Act does not *per se* apply to "excluded areas" and "partially excluded areas."[21] But by a notification, dated 6th September, 1938, in *Fort St. George Gazette*, Part I, page 1269, the application of the Act has been extended to the partially excluded areas in the Province of Madras.

Excluded areas.—The Laccadive Islands including Minicoy and the Amin Divi Islands.

Partially excluded areas.—The East Godavary Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under

(19) *L. M. Bank* v. *Karuppa Gounder.* S.A. 162/44, (1945) 1 M. L. J. (N.R.C.) 2.
(20) (C.R.P. 2205/39), 53 L.W. (S.R.C.) 76.
(21) Vide *Fort St. George Gazette*, Part I, dated 26th May, 1936, at page 674.

the provisions of the Government of India (Constitution of Orissa) Order, 1936.[22]

In regard to the extent of operation of the Act, knotty questions may arise as to inter-provincial transactions. An agriculturist in this Province may not obtain the protection of this Act when he is sued in the Courts of other Provinces. Whether the agriculturists in other provinces can invoke the provisions of this Act when sued in Courts of this province, that is, whether the law of the province in which a person resides or carries on business prevails or the law of the place (*lex loci*) where the Court in which the suit is launched prevails, is a matter on which the Act throws no light. But as can be seen from S. 3 (ii) (*a*), agriculturists of other provinces cannot claim relief under this Act.

ILLUSTRATION

A mortgage decree was passed in Berhampore Court which was included in a new province (Orissa). When execution proceedings were instituted in Berhampore Court and pending before it, applications under Ss. 19 and 20 were filed in that Court. The question arose whether the Berhampore Court which is part of a new Province could administer the law of Agriculturists' Relief Act of Madras Legislature. As the notification F. 210 of 1936, Judicial, dated 1st April, 1936, of the Governor-General under the Government of India Act, 1935, that pending cases should continue to be dealt with by the Courts of Orissa Province in which they were pending also shows that they should be dealt with as if the order in Council constituting the Orissa Province had not been made. Therefore the Berhampore Court can go on with the applications under Ss. 19 and 20 of the Act, as if it is still a Court included in the Madras Province and as such bound by the Legislative enactment in force in Madras.[23]

Decrees of other Provinces.- The Act has no application to decrees passed in other Provinces and Chapter II should be held to refer to decrees passed by Courts of Madras Presidency. Decrees passed (prior to the commencement of the Act) by a Court of the Bombay Presidency transmitted for execution to a Court in the Madras Province cannot be scaled down under S. 19 of the Act.[24]

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context

(i) 'person' means an individual and includes an undivided Hindu family, a marumakkattayam or

(22) Vide *Fort St. George Gazette*, Part I, dated 31st March, 1936 at p. 385.

(23) *Venkatappadu* v. *Ramamurthi*, 50 L.W. 851: (1939) 2 M.L.J. 853: 1940 M.W.N. 64.

(24) *Santhappa* v. *Scurappa*, (C.M.A. 424/40), 53 L.W. (S.R.C.) 62: (1941) 1 M.L.J. (N.R.C.) 57: 1941 M.W.N. (N.R.C.) 48 (2).

aliyasantana tarwad or tavazhi, but does not include a body corporate, a charitable or religious institution or an unincorporated Company or Association;

(ii) 'agriculturist' means a person who—

(*a*) has a saleable interest in any agricultural or horticultural land in the Province of Madras, not being land situated within a Municipality or Cantonment, which is assessed by the Provincial Government to land revenue (which shall be deemed to include peshkash and quit-rent), or which is held free of tax under a grant made, confirmed or recognised by Government; or

(*b*) holds an interest in such land under a landholder under the Madras Estates Land Act, 1908, as tenant, ryot or under-tenure holder; or

(*c*) holds an interest in such land, recognised in the Malabar Tenancy Act, 1929; or

(*d*) holds a lease of such land from any person specified in sub-clause (*a*), (*b*) or (*c*) or is a sub-lessee of such land:

Provided that a person shall not be deemed to be an 'agriculturist' if he—

[ ] Amended by Sec. 2 (1) of Act XXIII of 1948.

(A) has [*in both the two*] financial years ending 31st March, 1938, been assessed to income-tax under the Indian Income-tax Act, 1922, or under the Income-tax laws of any Indian State or foreign Government; or

[ ] Amended by Sec. 2 (2) of Act XXIII of 1948.

(B) has in [*all the four half years*] immediately preceding the 1st October, 1937, been assessed to profession-tax on a half-yearly income of more than six hundred rupees derived from a profession other than agriculture under the Madras District Municipalities Act, 1920, the Madras City Municipal Act, 1919, the Cantonments Act, 1924, or any law governing municipal or local bodies in any other Province in British India, any Indian State or any foreign State in India, or under the Madras Local Boards Act, 1920, in a panchayat which was a union before the 26th August, 1930; or

(C) has in *all the four half years* immediately preceding the 1st October, 1937, been assessed to property or house-tax in respect of buildings or lands other than agricultural lands, under the Madras District Municipalities Act, 1920, the Madras City Municipal Act, 1919, the Cantonments Act, 1924, or any law governing municipal or local bodies in any other province in British India or any Indian State, or under the Madras Local Boards Act, 1920, in a panchayat which was a union before the 26th August, 1930, provided that the aggregate annual rental value of such buildings and lands, whether let out or in the occupation of the owner, is not less than Rs. 600 ; or

Amended by Sec. 2 (i) of Act XXIII of 1943.

(D) is a landholder of an estate under the Madras Estates Land Act, 1908, **or of a share or portion thereof, whether separately registered or not, in respect of which estate, share or portion any sum** exceeding five hundred rupees is payable as peishkush, or any sum exceeding one hundred rupees is payable under one or more of the following heads, namely, quit-rent, jodi, kattubadi, poruppu or other due of a like nature, or is a janmi under the Malabar Tenancy Act, 1929, who is liable as such janmi to pay to the Provincial Government any sum exceeding five hundred rupees as land revenue.

Substituted by Sec. 2 (iii) of Act XXIII of 1943.

Explanation.—The annual rental value of any building or land for the purposes of proviso (C) shall—

(1) where the assessment is based on the annual rental value, be deemed to be such value ;

(2) where the assessment is based on the capital value, be deemed to be five per cent of the capital value ; and

(3) in any other case, be deemed to be the value ascertained in the prescribed manner :

(iii) " debt " means any liability in cash or kind, whether secured or unsecured, due from an agriculturist, whether payable under a decree or order of a civil or revenue Court or otherwise, but does not include rent

as defined in clause (iv), or 'kanartham' as defined in S. 3 (*1*) (1) of the Malabar Tenancy Act, 1929;

Inserted by Sec. 2 (iv) of Act XXIII of 1948.

(iii) (*a*) 'interest' means any amount or other thing paid or payable in excess of the principal sum borrowed or pecuniary obligation incurred, or where anything has been borrowed in kind, in excess of what has been so borrowed, by whatsoever name such amount or thing may be called, and whether the same is paid or payable entirely in cash or entirely in kind or partly in cash and partly in kind and whether the same is expressly mentioned or not in the document or contract, if any;

(iv) "rent" means rent as defined by the Madras Estates Land Act, 1908, or rent or michavaram as defined by the Malabar Tenancy Act, 1929, or quit-rent, jodi, kattubadi, poruppu or the like, payable to the landholder of an estate as defined by the Madras Estates Land Act, 1908, whether a decree or order of a civil or revenue Court has been obtained therefor or not, and includes interest payable thereon but does not include costs incurred in respect of the recovery thereof through a civil or revenue Court or the share of the land cess recoverable by the landholder under S. 88 of the Madras Local Boards Act, 1920; [and]

Omitted by Sec. 2 (v) of Act XXIII of 1948.

(v) "creditor" includes his heirs, legal representatives and assigns.

Added by Sec. 2 (vi) of Act XXIII of 1948.

(vi) "mortgagee" includes his heirs, legal representatives and assigns.

NOTES

Definitions: (i) Person.—The General Clauses Act X of 1897 defines "Person" in S. 3 (39), as including any Company or association or body of individuals whether incorporated or not. But this special definition restricts its meaning and according to the principle of *Specialia derogant generalibus*, the special definition must be applied in preference to the general. Groups of persons acquiring or inheriting agricultural land as tenants in common or members of a firm though formed for purposes of carrying on agriculture do not seem to be contemplated by this clause though they are not specifically excluded from

the definition of person.[25–26] Amendment proposing to include charitable or religious institution was lost.

S. 3 (i) : Definitions—Person : *Re* United Hindu Family : The definition of person includes an undivided Hindu family. The term undivided Hindu family covers a joint family which has reunited after division.[27] An unincorporated association is not a person and cannot get benefits of the Act, but an individual member of a firm being personally responsible for the debt can claim scaling down if he is an agriculturist not otherwise disqualified.[28]

(ii) (*a*) **Agriculturist.**—An agriculturist as defined does not include agricultural labourers comprising the category of persons who help a landholder, a tenant or sub-tenant in cultivation either as carpenter or blacksmith, a barber or farm-labourer.

Agricultural labourer.—An amendment proposing to include these persons is lost. In reply to this the Premier said : "The only reason why no provision had been made for the relief of such persons was that steps to be taken in connection with such relief were entirely different from the steps that could be taken in respect of persons contemplated in this measure. It is difficult to bring together under one law the two classes of people."

No upper limit to the Ryotwari landholder.—There is no upper limit to the ryotwari landholder as in the case of a landholder under the Madras Estates Land Act and of jammis in Malabar, where it has been fixed so as to exclude such from the benefits of the Act. So every ryotwari landholder is entitled to the benefits of the Act irrespective of his holding or the land revenue paid by him. Only occupational and residential restrictions have been placed on them and not monetary or quantitative ones. An amendment was proposed to put Rs. 400 as upper limit but was lost.

Money-lending Firm.—It is clear from the definition of an agriculturist that a firm of money-lenders cannot be an agriculturist.[29]

Saleable Interest.—The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. Such ownership may be absolute or qualified. If it is capable of being transferred by the owner, then it is a saleable interest. But in a case where the whole of the right, title and interest of a mortgagor has been sold in execution of the mortgage decree and mortgagor still retains possession of property, it cannot be held that the mere possession of mortgagor in the interval between sale and delivery of property could

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(25) and (26) *Premchand v. Nemandmal*, 1931 S. 121. Where it has been held that "agriculturist" includes a firm—*vide* S. 2 of the Dekkhan Agriculturists' Relief Act where no definition of the word "person" is engrafted.

(27) *Rajeswara Rao v. Venkatarayanim*, 54 L. W. 223 : (1941) 2 M. L. J. 304 : 1941 M. W. N. 776.

(28) *Satyanarayana v. Jesraj*, 55 L. W. (S.R.C.) 20 (2) : (1942) 1 M.L.J. (N.R.C.) 34.

(29) *Ramanatha Chettiar v. Sitarama Aiyar*, 53 L.W. 105 (1) : (1941) 1 M.L.J. 172 : 1941 M.W.N. 166 : 1941 M. 537.

amount to a "saleable interest" in the property. To qualify a person as an agriculturist there should be at least some degree of title which the holder thereof could convey to somebody else and a mere squatting on the land, after the owner's title has passed, cannot amount to such "saleable interest" sufficient to qualify the squatterer for the benefits of the Act.[30]

The fact that a person is a resident outside British India will not affect his status as an agriculturist within the meaning of the Act if he has saleable interest in agricultural land in the province of Madras. Where a mortgage contract not merely giving security for previous debts contains all the terms of liability and imposes conditions which are quite different from those imposed by pre-existing liabilities which are discharged under the mortgage and this mortgage was executed within Madras Presidency binding land situate in that presidency, such a contract must necessarily be governed by the Laws of that province and an application under the Act is maintainable even though previous liability which was discharged was one incurred outside British India.[31] A petitioner sought scaling down of a debt claiming to be an agriculturist on the ground of his having a saleable interest in a property, notwithstanding that the property had been contracted to be sold to respondent, since owing to want of registration it could not really pass title to the transferee and at any time a *bona fide* purchaser for value without notice of the agreement would have acquired the vendor's title in the property. "Saleable" cannot mean capable of being sold for perpetration of a fraud, namely, the omission to disclose the existence of a specifically enforceable contract, to sell, and since a sale by the petitioner in this case to any other person after due disclosure could be easily defeated at the instance of the respondent, there is no saleable interest in the land which would entitle him to claim relief as an agriculturist under Sec. 3 (ii) of the Act.[32] If, on 1-10-1937 and 22-3-1938, which are the crucial dates for purpose of determining whether or not an applicant is entitled to relief under Act, all his properties were vested in the Official Receiver in his insolvency, the mere circumstance that he was in possession of certain properties purchased by him from the Official Receiver in the insolvency of another person when the properties still remain vested in the Official Receiver and had not been conveyed to the applicant, would not make him the owner of any property in which he could be said to have saleable interest for the purpose of qualifying him as an agriculturist.[33] Where a person purchases properties subject to mortgage only in May 1940, he cannot be deemed to be debtor when the Act came into force and there can be no question of

(30) *Muthu* v. *Vellappa*, (C.R.P. 2201/39), (1941) 1 M.L.J. (N.R.C.) 70: 1941 M.W.N. (N.R.C.) 58: 53 L.W. (S.R.C.) 75.

(31) *Ramiah* v. *Ramiah*, 56 L.W. 105: (1943) 1 M.L.J. 32: 1943 M.W.N. 94: 1943 M. 330: 210 I. C. 189.

(32) *Jayalakshmamma* v. *Ramachandrayya*, 56 L.W. 518: (1943) 2 M.L.J. 285: 1943 M.W.N. 603: 1943 M. 711: 213 I.C. 215.

(33) *Ramalingam* v. *Durgamma*, A.A.O. 111/46: 60 L.W. (S.R.C.) 11.

calling in aid Sec. 19 to apply Ss. 8 and 9 to the debt as if it was a debt falling under either of these sections.[34]

The following are held to have saleable interest in agricultural land :—

1. **Limited Estate of Widow.**—A Hindu widow inheriting her husband's estate has sufficient saleable interest to sustain an application under Ss. 19 and 23,[35] as the widow has a right to sell her interest.[36]

2. **Simple Mortgagee.**—A simple mortgagee of agricultural land has a saleable interest therein so as to bring him within S. 3 (ii) (*a*).[37]

3. **Holder of Vendor's lien**—Holder of a vendor's lien in an agricultural land has a saleable interest therein. Whether or not the lien subsists, depends largely on the circumstances of the transfer—for instance, if the transferee has the right to hold the unpaid money for the protection of his own interest against the encumbrances, there can hardly be a debt due to the transferor in respect of which the lien may be said to subsist.[38]

Donee.—Donee from mortgagor of one of the items of hypotheca impleaded in a suit on mortgage is liable as judgment-debtor and so the donee having saleable interest can apply for the benefits of the Act.[39]

Decree against executor.—In the case of a decree against an estate in the hands of the executors there is no provision in the Act under which such an impersonal entity as an estate can claim relief under the Act as an agriculturist.[40]

Other examples.—The right of a *cestui que trust* in a mortgage debt is a saleable interest.[41] Ownership may be of tangible or intangible property. S. 54, T.P. Act, covers the case of a "reversion or other intangible thing." "Thing is an unfortunate word to apply for more reasons than one, because the reference can only be to an interest of some sort in immovable property, and it is difficult to see how the phrase 'in the case of a reversion or other intangible thing'

(34) *Kali Govindan* v. *Annamalai Chetty*, 56 L.W. 692 : (1943) 2 M.L.J. 531, 1943 M.W.N. 766 : 1944 M. 128 : 213 I.C. 168.

(35) (C.M.A. 453 and 454/38), 50 L.W. (S.R.C.) 54.

(36) *Nachayammal* v. *Parvathi Ammal* (C.R.P. 967/38), (1940) 2 M.L.J. (N.R.C.) 10 (2).

(37) *Subbu Ramaiar* v. *Venkatachalapathy Ayya*, 52 L.W. 480 : (1940) 2 M.L.J. 516 : 1940 M.W.N. 1006 : 1940 Mad. 941 ; *Periaswamy Chettiar* v. *Ramaswami Gounden*, 52 L.W. 481 : (1940) 2 M.L.J. 513 : 1940 M.W.N. 1090 : 1941 Mad. 113.

(38) *Singarachariar* v. *Pappathi Ammal*, 52 L.W. 436 : (1940) 2 M.L.J. 501 : 1940 M.W.N. 959 : 1941 M. 127.

(39) *Parvathi Amma* v. *Subramanian Pattar*, 52 L.W. 680 : (1940) 2 M.L.J. 749 : 1940 M.W.N. 1148 : 1940 M. 944.

(40) *Palaniappa* v. *Ramaswamy Naidu*, 58 L.W. 565 (1) : (1945) 2 M.L.J. 410 : 1945 M.V.N. 723 (1) : 1946 M. 58 : 223 I.C. 453.

(41) *Moola Sons* v. *Rangoon Official Assignee*, 1936 P.C. 230 at 234 ; *Miller* v. *Collins*, (1896) 1 Ch. 573.

can be intended to fall short of covering every interest in immovable property which is not regarded (as *e.g.*, an undivided share in land is regarded) as being tangible immovable property itself"[41A]. Thus a reversion, *i.e.*, the undisposed-of interest in land which reverts to the grantor (landlord) after a certain time,[42] an undivided share in immovable property[43] and a usufructuary mortgagor's interest in the mortgaged property[44] are intangible interests in immovable property which are saleable. The heir of a deceased person has a saleable interest in the heritage though he is not entitled to possession, of what he inherits or is bequeathed to him, except in the due course of administration.[45] A vested remainder is a saleable interest though it is liable to be displaced by a condition subsequent.[46] In the case of sales in Court auction, though the vesting of title relates back to date when sale is held, title does not vest until the sale is confirmed as it does not become absolute till then.[47] But it has been held that a gift by auction purchaser made *before the confirmation of sale*, authorising the donee to take possession is valid.[48] Similarly an agreement of sale executed by an auction purchaser on the date of Court sale is valid.[49] When once a sale has been held third party's interest intervenes.[50] It follows therefore that purchasers in Court sales held before 1-10-1937 though confirmed later have a saleable interest in land on that date. After the expiry of 30 days prescribed for an application to set aside an auction sale, the auction purchaser can effectively sell the property even in the absence of confirmation of sale by Court (*i.e.*) he has a saleable interest in the property. If he has acquired such interest it is difficult to see how the judgment-debtor can also be said to have a saleable interest in the property.[51] Easements and profits' *a prendre* are not interests in land, but mere privileges appurtenant to the dominant tenement involving an obligation on the servient tenement. Rights annexed to the ownership of land and benefits to arise out of land cannot be called *interest in land* though they are saleable as immovable property. Right under a mere agreement for sale is a right annexed to to the ownership but not an interest in land.[52] A widow's right to

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(41 A) *Moola Sons* v. *Rangoon Official Assignee*, 1936 P.C. 230 at 234; *Miller* v. *Collins*, (1896) 1 Ch. 573.

(42) *Bhaskar* v. *Padman*, 40 B. 313.

(43) *Nathu* v. *Gulabchand*, 1934 N. 13; *Moola Sons* v. *Rangoon Official Assignee*, 1936 P.C. 230 at 233; *Hoe Kyim* v. *Hlagye*, 1924 R. 267.

(44) *Sohanlal* v. *Mohanlal*, 1928 A. 726 (F.B.); *Pheiku Mian* v. *Syed Ali*, 1937 P. 178; *Ramaswami Pattar* v. *Chinnam Asari*, 24 M. 449.

(45) *Ramanuja Ammal* v. *Swami Pillai*, 22 M.L.J. 228.

(46) *Umesh Chander* v. *Fatima*, 18 Cal. 164 (P.C.).

(47) *Abdul Rahman* v. *Fateh Narain*, 1926 Oudh 189: 91 I.C. 1047; *Bhavani Kumar* v. *Madhura Prasad*, 23 M.L.J. 311 (P.C.).

(48) *Abid Hussain* v. *Munno Bibi*, 102, I.C. 72.

(49) *Ramachendra* v. *Lakshman*, 1930 B. 81.

(50) *Nankelal* v. *Umrao Sinh*, 1931 P.C. 33.

(51) *Ramaswami Ayyar* v. *Komalavalli Ammal*, 52. L.W. 955: (1940) 2 M.L.J. 1055: 1941 M.W.N. 176: 1941 M. 277.

(52) *Bhup Narain* v. *Gokulchand*, 1934 P.C. 68 (71): 39 L.W. 363: 1934 M.W.N. 206: 66 M.L.J. 255; *Veeraraghavayya* v. *Kamaladevi*, 1935 M. 193 (194): 41 L.W. 739: 68 M.L.J. 67: 1935 M.W.N. 488: 157 I.C. 1040.

be maintained out of lands,[53] a right to receive Melwaram in future[54] and a right to receive future rents or income out of immovable property[55] are benefits to arise out of land but not "interest" in land.

A person cannot be said to have a saleable interest in land if his interest is rendered inalienable by law or for some other reason, (*e.g.*), a service inam.[56] Similarly an insolvent cannot sell his property between the date of presentation of petition and adjudication.[57] The chance of an heir-apparent succeeding to an estate, or the chance of a relation obtaining a legacy on the death of kinsman or any other mere possibility of a like nature cannot be transferable as they are not *interests* in the eye of law. A trustee cannot have a saleable interest in the trust property on his own behalf, unless he has a beneficial interest in the property.[58]

Agriculture.—There is no definition of "agriculture" in the Act. Agriculture is described in different ways in dictionaries and is diversely interpreted by the learned Judges. Agriculture means the science or art of cultivating the soil including the allied pursuits of gathering in the crops and rearing livestock, tillage, husbandry, farming (*Oxford Dictionary*). Agriculture has much wider import than cultivation.[59] As observed by Anantakrishna Iyer, J., "General definitions given in dictionaries would be of use only when there is nothing to the contrary in the context of any particular provisions of law which the Courts have to construe".

Agricultural land.—Pronouncements by Courts on other provisions of other Acts however useful would not be decisive as authority when we have to construe the provisions of a different Act,"[60] and Reilly, J., observes at page 661 "on the other hand to compare and contrast the definitions of the same word in a number of Acts is often of the greatest use in determining what is the meaning to be attached to the word in one of those Acts." "Agriculture" according to its derivation, means the cultivation of a field, the cultivation of an open space as opposed to "horticulture" which is the cultivation of a comparatively small enclosed space, and cultivation means tillage and breaking up the soil.[61] Sadasiva Ayyar, J., held that "the ordinary meaning of agriculture is the raising of annual or periodical grain crops through the operation of ploughing"[62] whereas Reilly, J., was of opinion that ploughing is not necessary for agriculture.[60] Again agriculture is not confined to

(53) *Kalpa Guthachi* v. *Ganapathi*, I.L.R. 3 M. 184.
(54) *Mangalaswami* v. *Subba Pillai*, 34 M. 64 (66).
(55) *Natha* v. *Dhunabiji*, 23 Bom. 1.
(56) *Munna Singh* v. *Gajadhar*, 5 A. 577.
(57) *Sheonath* v. *Munsi Ram*, 42 All. 433.
(58) *Mosa Khan* v. *Thakore Gopiji*, 1937 A. 344.
(59) *Hedayet* v. *Kalanand Singh*, 17 C.L.J. 411 : 20 I.C. 323 (334).
(60) *Bharathi Swamigal* v. *Duraiswami*, 1931 M. 659 (666) : 34 L.W. 185 : 61 M.L.J. 648 : 54 M. 900.
(61) *Murugesa* v. *Chinna Thambi*, 24 M. 421.
(62) *Raja of Venkatagiri* v. *Ayyappareddi*, 38 M. 738 (741) : 21 I.C. 532 : 25 M.L.J. 578 ; *Seshayya* v. *Raja of Pithapur*, 34 I.C. 730.

the production of those things only which are fit for consumption by man or beast[63] nor is it restricted to the raising of grain crops only.[64] Agricultural land is one used for agricultural purposes. The agricultural purposes refer to tilling and cultivation for purposes of raising crops. In their widest sense, the words may include grazing but it is impossible to hold that all land held for grazing purposes is land held for agricultural purposes.[65] The expression ought to be construed liberally. A reclamation grant expressly for the purpose that the jungle might be removed and the land brought under cultivation is a lease for agricultural purposes.[66] Agriculture connotes the raising of useful or valuable products which derive nutriment from the soil with the aid of human skill and labour, and thus it will include horticulture, arboriculture and sylviculture in all cases where the growth of trees is effected by employment of human care and attention in such operations as those of ploughing, sowing, planting, manuring, watering, protecting, etc.[67] But this definition is held to be loose and wide in its operation.[68] In the absence of a specific definition, letting of a grove,[69] letting of land for planting trees[70] for casurina plantation[71] is not for agricultural purposes. Lease for pasture for cattle[72] extracting toddy from coconut trees,[73] for cultivation of tea[74] or coffee,[75] or betel[76] is an agricultural lease. Lands on which are grown potatoes, grain, vegetables are agricultural lands.[77] Lease for fishery rights on land covered with water is not for agricultural purpose.[78] Nor the process of letting sea water on land and extracting salt therefrom,[79] nor using land for quarrying purposes and getting income thereon.[80]

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(63) *Pavadi Pathan* v. *Ramaswami Chetti*, I.L.R. 45 M. 710 : 1922 M. 351.

(64) *Bharathi Swamigal* v. *Duraiswami*, 1931 M. 659 (666) : 34 L.W. 185 : 61 M.L.J. 648 : 54 M. 900.

(65) *Alimohib* v. *Surat Singh*, 15 I.C. 743.

(66) *Jogendra Chendra Sanyal* v. *Lal Mohan Podder*, 13 C.L.J. 318.

(67) *Pavadi Pathan* v. *Ramaswami*, 45 M. 710.

(68) *Bharathi Swamigal* v. *Duraiswami*, 1931 M. 659 : 34 L.W. 185 : 61 M.L.J. 648 : 54 M. 900.

(69) *Keshari Prasad* v. *Sheo Pragash*, 1924 P.C. 247.

(70) *Commissioner of Income-tax* v. *Mannavedan*, 1930 M. 764 : 32 L.W. 170 : 54 M. 21 (F.B.).

(71) *Devaraja* v. *Ammani*, 34 I.C. 539, but see contra *Pavadi Pathan* v. *Ramaswami*, 45 M. 710 : 1922 M. 351.

(72) *King-Emperor* v. *Alexander Allan*, 25 M. 627 : 12 M.L.J. 393 ; *Prabhat Chandra Barua* v. *Emperor*, 1924 C. 668 contra ; *Raja of Venkatagiri* v. *Appayyareddi*, 21 I.C. 532 : 25 M.L.J. 578 : 38 M. 738 (741).

(73) *Commissioner of Income-tax* v. *Yagappa*, 1930 M. 1038 : 50 M. 923 (F.B.).

(74) *Kajumal* v. *Saligram*, 1924 P.C. 1.

(75) *Murugesa* v. *Chinna Thambi*, 24 M. 421.

(76) *Bharathi Swamigal* v. *Duraiswami*, 1931 M. 659 (688).

(77) *King-Emperor* v. *Alexander Allan*, 25 M. 627 : 12 M.L.J. 393.

(78) *Commissioner of Income-tax* v. *Pandia Thevar*, 1932 M. 757 : 63 M.L.J. 634 (F.B.).

(79) *Commissioner of Income-tax* v. *Lingareddi*, 1927 M. 848 : 50 M. 204 : 53 M.L.J. 377 (F.B.).

(80) In re *Shiblal Gangaram*, 1927 A. 703 : 25 A.L.J. 816.

Section 3 (1) of Madras Estates Land Act says "Agriculture with its grammatical variations and cognate expressions shall include horticulture."

Section 2 (c) of the Madras Debt Conciliation Act (Act XI of 1936) defines agriculture as including horticulture, the use of land for any purpose of husbandry inclusive of the keeping or breeding of live-stock, poultry or bees, sericulture and the growing of fruits, vegetables and the like. Agriculture is used in the section along with horticulture and so it does not include horticulture and therefore according to the general maxim that specific inclusion of one necessarily implies the exclusion of others, agriculture as used in the section does not comprise horticulture or arboriculture or sylviculture.

Horticulture.—Horticulture is defined to mean the cultivation of garden or orchard, the science and art of growing fruits, vegetables and flowers or ornamental plants. (*Webster's Dictionary*). If a lease is for the purpose of gathering fruits from the trees on the land, the lease is not for horticultural purposes.[81]

Mere house-site in a village would not come under "agricultural land" unless the site is used for raising crops, fruits, vegetables, flowers or any other kind of agricultural produce.

Not being situate within a Municipality or Cantonment.—An amendment proposing to delete these words was lost. All that this sub-section requires is that a person should have saleable interest in any agricultural land situate outside a Municipality, etc., and if he has such land it is wholly immaterial whether or not he owns agricultural land within a Municipality.[82]

The object of the legislature is to preclude holders of small pieces of agricultural lands within Municipality, etc., from receiving relief under the cloak of the Act in respect of their debts which have presumably no connection with agriculture which is essentially a rural industry. The Premier says in the course of proceedings in the Legislative Assembly: "If we want to distinguish the occupation of agriculture from other occupations, we must go by the provisions we have made in this Bill and that is the explanation why we have gone at great length to put aside the persons living in urban areas, even the man who has only a bit of land in a Municipality."

Lease.—The lease may or may not be in writing. An amendment proposing that the lease should be in writing so as to steer clear of all sorts of contentions that may be set up by tenants to deny the liability to pay the debt and set up false pleas of being agriculturists under oral leases, was lost.

The words are "sub-lessee of such land" and not sub-lessees under such lessee. So sub-lessees and persons holding under such

(81) *Hedayet* v. *Kalanand Singh*, 17 C.L.J. 411 : 20 I.C. 332.

(82) *Ramaswami Ayyar* v. *Komalavalli Ammal*, 52 L.W. 935: (1940) 2 M.L.J. 1055 : 1941 M.W.N. 176 : 1941 M. 277.

sub-lessees come within the meaning of the section. A subsequent lessee under a mortgagor could raise the question as to the scaling down of the debt in a suit by usufructuary mortgagee to recover possession.[83]

Sub-clause (*c*).—The persons recognised as holding interest in lands under Malabar Tenancy Act of 1930 are (1) A "Jenmi", i.e., a person who is entitled to the absolute ownership of land or who is a trustee in respect thereof. (2) An "Intermediary", i.e., any person who, not being a Jenmi, has an interest in land, and is entitled by reason of such interest, to possession thereof, but has transferred such possession to others. (3) A "Kanomdar", i.e., a person who obtains the transfer for consideration in money or in kind, or in both, from a landlord of an interest in specific immovable property for the former's enjoyment with certain specified incidents attaching to the transfer (*vide* S. 3 Cl. (*l*) of the Malabar Tenancy Act).

Burden of proof.—The person who seeks relief under this Act has first to establish a *prima facie* case that he falls under one of the categories enumerated in S. 3 (ii), clauses (*a*) to (*d*). Then the burden shifts to the respondent to show *prima facie* that the applicant is excluded by one or other of the following provisos. When this has been done, the burden again shifts to the applicant to adduce materials which are specially within his knowledge and have a bearing on the applicability of the provisos.[84]

It is incorrect to say that because the debt was incurred originally by an agriculturist his transferees are entitled to the benefits of the Act whether they are themselves agriculturists or not.[85]

Provisos : General.—The object of the Act is to rehabilitate agriculture which is the basic industry of the Province. So as to exclude persons who follow avocations other than agriculture, and persons paying income-tax, profession-tax, etc., these provisos are incorporated in this section. The provisos are applicable only with reference to the debts contracted before the passing of the Act. With respect to the debts incurred after the passing of the Act, the provisos as modified by the explanation to S. 13 are to be applied. The provisos refer only to assessment of taxes but not payment of the same.

Proviso A.—An amendment to insert 'consecutive' in the place of 'either of' was proposed on the ground that a person may by chance happen to be assessed for one year only, as in the depression days many agriculturists have thought of many desperate means of augmenting their income, *e.g.*, buying a bus and plying it for hire for a year, and it was lost. The Premier replied "If a man is so unsteady an

(83) *Varahalayya* v. *Raja* (1940) 2. M.L.J. 290 : 1940 M.W.N. 917 : 1941 M. 21.

(84) *Periaswami Pillai* v. *Sivathia Pillai*, 52 L.W. 470 : (1942) 2 M.L.J. 498 : 1940 M.W.N. 991 : 1941 M. 112. *See also* C.M.A. 559/38 : 53 L.W. (S.R.C.) 5 ; 4.

(85) *Sethuraman Chettiar* v. *Ramanathan Chettiar*, 59 L.W. 280 : (1946) 1 M.L.J. 273 : 1946 M.W.N. 382 : I.L.R. 1947 M. 141 : 1946 M. 437 : 227 I.C. 360.

agriculturist that he gives up agriculture and takes up an occupation for one year and gets so much as to pay income-tax thereon and if next year he takes to some other occupation giving up his former occupation because it was a loss or whatever the reason may be, that is not the person to whom we contemplate to make this measure applicable which up to certain extent upsets the prevailing order of things with reference to contract of debts, we wish to help only the agriculturist; we do not propose to help the person, whose number is comparatively less, who takes up an occupation which gives him one year the income on which he has to pay the tax and then goes back to the village, cultivates the land and pays rent to the Government. A man cannot claim the benefit of this Bill for even loans taken for the purpose of carrying on the business on which he pays the income-tax or in which he is losing, that is not the design of the Bill ".

The words " has been assessed " indicate that the orders of assessment have been passed before the passing of the Act so that the proviso will not apply to persons whose returns were pending disposal before the income-tax authorities by the time the Act commenced its operation.

Criterion—Not the period but the date of assessment.—The proviso applies to a case in which the assessment to income-tax was made in 1936-1937 though the assessment was made in respect of income of the previous year. The criterion is not the period in respect of which an assessment is made but the date of assessment.[86]

The assessment to incometax which disqualifies a person from claiming to be an agriculturist for obtaining relief under the Act must have been an assessment made, not for the two financial years mentioned in Proviso (A) but must have been made in either of these two years. The appropriate authority in S. 54 (3) of I.T. Act includes a Civil Court which is called upon to determine judicially whether a person has or has not been assessed to income-tax in a given year.[87]

Change in Law.—There must be an assessment in both these years, namely years 1-4-1936 to 31-3-1937 and 1-4-1937 to 31-3-1938. The amendment was effected with a view to extend relief to a large number of debtors by liberalising the definition of agriculturist. *In all the four half years*—By reason of the Amendment Act 23 of 1948, assessment in all the four half years is required for negativing the right of scaling down of debts.

Assessee as manager of joint family and other members can apply for benefits of the Act.—If the assessee was assessed as the manager of the joint family, his sons would not be entitled to apply for scaling down the decree passed against the father, when it was sought to be executed against the sons after his death. If, on the other hand, the

(86) *Sarveswararao* v. *Umamaheswararao*, 52 L.W. 765 : (1940) 2 M.L.J. 841 : 1940 M.W.N. 1192 : 1941 M. 152; *Raju* v. *Palaniappa Chettiar*, 52 L.W. 731 : (1940) 2 M.L.J. 817 : 1940 M.W.N. 1156 : 1941 M. 289 : 193 I.C. 547.

(87) *Venkataseshavarathan* v. *Venkatarangayya*, 59 L.W. 53 : (1946) 2 M.L.J. 257 : 1946 M.W.N. 654 : 1947 M. 111.

assessee was assessed in his individual capacity, then his sons would be entitled to apply for the scaling down of the decree on the ground that they are agriculturists. Because a person was in fact the manager of a joint family at the time when he was assessed to income-tax, the assessment is not necessarily in respect of the joint family income whether the assessment was in his individual capacity or as manager of a joint family should be elucidated by the production of the actual order of assessment.[88] If the assessment in respect of joint family property was levied on the manager in his capacity as manager, this assessment is sufficient to disqualify the family as a whole from the status of an agriculturist.[89]

Partnership assessed.—When a partnership was assessed to income-tax for 1937–1938 (though a partner was not individually assessed), the individual partner cannot claim the benefits of the Act as he shall also be deemed to be assessed within the meaning of the Act.[90]

(1) A member of a joint Hindu family brought a suit for partition and was himself appointed as Receiver of the properties *pendente lite*. While carrying on family business during the pendency of the suit, he was assessed as a receiver to income-tax for period referred to in proviso (A) to S. 3 (ii) on the basis that he and other members of the family after the institution of the suit, constitute an association of persons within the meaning of S. 3 of I.T. Act. When association of persons is assessed to income-tax, what is really assessed is the income of the individual members and the position is not different under this Act. Both a firm and an association of persons are alike excluded from the definition of a person as that expression is defined in this Act. So he is not entitled to claim the benefits of the Act.[91] A person who became divided from his uncle as a result of a partition suit decreed on 30–3–1936 is not disentitled to claim relief as an agriculturist under S. 19, by reason of mere fact that his uncle was assessed to income-tax as Manager of a joint family for 1936–37 in ignorance of this division in family. The nephew was himself a person not assessed to income-tax and whose income could not to be deemed to be assessed having regard to provisions of S. 14 of the I.T. Act.[92]

Proviso B (within the 2 years).—"In all the four half years" But, by Amendment Act of 1948, "in all the four half years" was substituted.

Foreign state in India.—An amendment to delete the words 'in India' was proposed and lost.

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(88) Vide *Raju* v. *Palaniappa Chettiar*, 52 L.W. 731 : (1940) 2 M.L.J. 817 : 1940 M.W.N. 1156 : 1941 M. 289 : 193 I.C. 547.

(89) *Chockalingam Chettiar* v. *Muthurama Chettiar*, 52 L.W. S.R.C. 60 : (1940) 2 M.L.J. N.R.C. 62 (C.M.A. 43/39).

(90) *Ramanathan* v. *Sitaram*, (C.M.A. 134/40) : (1940) 2 M.L.J. (N.R.C.) 69 : *Vankadari Somappa* v. *Venkataswami Chetti*, 53 L.W. 685 : (1941) 1 M.L.J. 782 : 1941 M.W.N. 488.

(91) *Ramaswami Naicker* v. *Sokkayya Naicker*, 55 L.W. 352: (1942) 1 M.L.J. 559 : 1942 M.W.N. 287 : 1942 M. 428.

(92) *Venkata Kutumba Rao* v. *Veerabadrudu*, 56 L.W. 132 (1): (1943) 1 M.L.J. 211 : 1943 M.W.N. 705 : 1943 M. 469 : 210 I. C. 395.

An amendment for the deletion of the proviso B was proposed in the Assembly but not carried. The Premier, in opposing the amendment, said : " The deletion of this proviso would completely alter the character of the whole measure. It is true, and I shall admit it at once, that a large number of deserving people will not get the benefits which we propose to afford by this Bill to a majority of agriculturists. But in order to bring a large number of such people, if we omit a proviso like this, we shall be entirely changing the consequences in character altogether, not only in measure. Anyhow who lives in a Municipal town or a major union who carries on a trade, but who has a little bit of land on which he pays some tax in some village will be entitled to bring under this measure, all his trade debts in case the proposed amendment is accepted. Liabilities arising out of purchases in shops in a major union or in a bazaar in a town will all be brought under the scope of this measure, which was not the intention of this Bill."

An amendment proposing Rs. 600 in the place of Rs. 300 was made by the Amending Act of 1948.

Change in Law.—The basic limit of assessment has been enhanced up to Rs. 600 with the object of extending the benefits of the Act to agriculturists who earn a larger income by other profession. Even where they earn more than Rs. 600 per half year, they will be entitled to the benefit of the lower rate of interest provided in S. 13.

Any half year : Correctness or validity of Assessment.—Old Law.—The assessment for any of four half consecutive years from October, 1935 to September, 1937 would be sufficient, and an assessment for all consecutive half years is not required. The words are simple " has been assessed " and they are qualified by no adverb relating to correctness or validity of assessment.[93] This is no longer good law in view of the amendment, assessment for all four half years, is required.

What disqualifies a person under proviso B is the individual assessment of that person to profession tax on a certain stipulated income, and hence in applying that proviso one is not entitled to take into consideration, in addition to the income in respect of which the alleged agriculturist has actually been assessed to profession tax, the share of income of the firm which firm has been separately assessed to profession tax.[94] A person who pays profession tax on pension as retired Government servant is a person who comes under this proviso.[95] It is not open to Court dealing with the applicability of the proviso to go into the question whether a person who was in fact assessed has been legally assessed or not. Assessment to property tax under the Madras Local Boards Act is not challenged within time. Schedule 4 of the Act does not empower the President to cancel the

(93) *Kamanna* v. *Sattireddi*, 52 L.W. 420 (1): (1940) 2 M.L.J. 467: 1940 M.W.N. 997: 1940 M. 919.

(94) *Manicham Chettiar* v. *Krishnappa Chettiar*, 55 L.W. 24; (1942) M.L.T. 24: (1942) M.W.N. 23: 1942 M. 382; 254 I C. 692,

(95) *Krishna Warrier* v. *Malayalee Bank Ltd.*, 652 W. 238; (1942) 1 M.L.J. 466: 1942 M.W.N. 331: 1942 M. 449.

assessment. Expunction of assessee's name from registers by Panchayat cannot affect assessee's legal position. Assessee must be deemed to be assessed within the meaning of the proviso.[96]

Time of Assessment is the criterion.—The criterion for exclusion is the time within which the assessment was made and not the actual period for which the tax was payable.[97] For example, an assessment was actually made on 15-1-1938 but it was retrospective so that it covers the half year beginning with 1-4-1937.[97]

No meaning to be derived from Forms.—An argument has been based on Form B prescribed under the Act for certificate under S. 27 which form provides for details regarding the period for which an individual has been assessed to tax and does not provide for the entry of the date of assessment. This may well be a defect in the drafting of the form but we cannot admit the proposition that the meaning of the Act is to be derived from forms which have been prescribed by the Government under its rule-making powers.[97]

The words "has been assessed" indicate that there should be an order of assessment before the passing of the Act.

When there is such an order, at the time of application of relief under the Act, any subsequent passing of a decree for a declaration that the assessment was invalid could not be relied upon to prove that the applicant is an agriculturist.[98]

Panchayat which was a Union before 26-8-1930.—Prior to the passing of the Madras Local Boards (Amending) Act (XI of 1930), village panchayats were governed by a special Act, the Madras Village Panchayat Act XV of 1920 while the Union Boards and Taluk Boards constituted under the head as Local Boards Act functioned similarly in other rural areas. In order to adopt a uniform system of local self-government throughout the presidency, Act XI of 1930 was passed bringing the village panchayat also within the scope of the Local Boards Act and the Unions then functioning were converted into Panchayats under the amended Local Boards Act which came into force on 26-8-1930. The proviso refers to this latter class of Panchayats.

Proviso C (within two years).—"In all the four years." Words "in all the four half years." are substituted for these words by the Amending Act of 1948.

Assessed.—"Assess" means to rate, ascertain, to apportion or fix the amount of a tax to be paid or contributed, to make a valuation or official estimate of property for the purpose of taxation; to adjust

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(96) *Krishnamurthi v. Jaganatha Padhi, Khadanga*; 55 L.W. 470: (1942) 2 M.L.J. 153: 1942 M.W.N. 447: 1942 M. 598.

(97) *Sarveswararao v. Umamaheswararao*, 52 L.W. 765: (1940) 2 M.L.J. 941: 1940 M.W.N. 1192: 1941 M. 152.

(98) *Kamanna v. Somayajulu*, (C.R.P. 866/39): (1941) 1 M.L.J. N.R.C. 61.

or apportion, to tax or settle a sum to be levied or paid (as) assessed taxes; revenue assessed on land (*Law Lexicon* of Madras Law Journal Office).

Proviso (C) excludes from the benefits of the Act only persons who have been actually assessed to property tax therein, and not one though liable, has for some reason or other escaped assessment. A person cannot be held to be assessed unless the assessment is in his name. It is not sufficient to show that he is interested in property assessed.[99]

A case comes within the proviso (C) when (1) there is property which has an annual rental value of not less than Rs. 600, (2) the property has been assessed to house or property tax for 2 years immediately preceding 1–10–1937, and (3) when the Municipality demands or recovers the tax from the owner or otherwise treats him as liable to pay the tax. The decision in (1939) 2 M.L.J. 495 is erroneous in that it holds that a person cannot be assessed within the meaning of proviso (C) unless the assessment is made in his name in the Municipal Assessment register. The insertion in the Assessment Register of the name of the true owner is not the deciding factor.[1] The valuation referred to in proviso (C) relates to period covered by the assessment in question, and not the date when the Act came into force, namely 22–3–1938. Hence the period during which the rental value is to be not less than Rs. 600 must be the same two years within which the assessment is to disqualify the person who claims to be an agriculturist[2]. When a person owned property in respect of which taxes were demanded from him and on his representation the assessment was reduced, he was the person who actually paid the tax, he is the person who is assessed to property tax in respect of property even though Muncipal demand register has not been brought up to date by the substitution of his name for that of some former owner.[2]

Property tax throughout four half years necessary: Previously it is not necessary that property tax should be imposed throughout the period of two years. If at any point of time within the period the disqualification has been incurred it will satisfy the terms of the proviso. Now, imposition of tax throughout all the four half years is necessary.

Illustration.—Defendant mortgagors paid property tax for half year ending 31–3–1936 on an annual rental value of Rs. 613, for half year, ending 1–10–1936 and for half year ending 31-3-1937 on rental value of Rs. 300 and for half year ending 30–9–1937 on rental value of Rs. 367. The contention that annual rental value should be arrived at by adding the valuation for each of two half years and dividing the same by two is unsustainable. The word 'Aggregate' refers to total

(99) *Swaminatha Odayar* v. *Srinivasa Iyer*, 50 L.W. 411 : (1939) 2 M.L.J. 495 : 1939 M.W.N. 910 : 1939 M. 942 ; *Sarveswararao* v. *Umamaheswararao*, 52 L.W. 765 : (1940) 2 M.L.J. 841 : 1940 M.W.N. 1192 : 1941 M. 152.

(1) *Srinivasa Iyer*, v. *Swaminatha Odayar*, 57 L.W. 328 (F.B.) : (1944) 1 M.L.J. 425 : 1944 M. 359 : 270 I. C. 329.

(2) *Venkatappayya* v. *Malaya*, 55 L.W. 164 : I.L.R. (1944) M. 768 : (1942) I.M.L.J. 388 : 1942 M.W.N. 208 : 1942 M. 410 : 204 I. C. 570.

rental of value of various buildings and lands in respect of which the tax has been imposed and not to total valuations for two half years.[2A]

Aggregate annual rental value.—The annual rental value is the net figure after taking into consideration the deductions and not the gross rental.[3] In computing the aggregate annual rental value of properties, only the proportionate share of the value of the house in which the debtor holds only a share and not the whole rental value of the house should be taken into account.[4]

Ownership essential and Rule 7.—An amendment proposing to limit the exclusion to actual owners of the property who may be assessed, by inserting the words "owner assessed as such," was rejected on the ground that it was not the intention to accept evidence of ownership of property as it would lead to complicated and unnecessary litigation. Therefore as the section stands, it is not necessary that the assessee should be the actual owner of the property in respect of which the assessment was levied. The Government, on seeing the several difficulties that have arisen in the course of administration of the Act and as a measure to transcend over the same and remove the ambiguity, has framed in exercise of its rule-making powers under S. 28, the r. 7 to the effect that when an assessee proves that he was not the owner of the property assessed, at any time during the period mentioned in this proviso, such assessment shall by itself have the effect of excluding such person from the category of 'agriculturist' as defined in the S. 3 (ii). "Presumably the intention of this rule is to cover cases in which the Municipal assessment register is not up-to-date, so that the assessment would stand in the name of some one who does not actually pay it. It may well be argued that proviso (C) contemplates not only the assessment of an individual but also the ownership by that individual of property in respect of which he has been assessed. It could not however be argued that proviso (C) contemplates only the ownership of property by individual concerned and does not contemplate assessment in respect thereof."[5]

Rule 7.—Intra vires.—Though proviso (C) did not make ownership an integral part of the assessment, it however contemplates that the person assessed was to be the owner at the relevant period. R. 7 is *intra vires* of the Provincial Government as it does not contemplate anything repugnant to the intention of the proviso, nor could it be said that the rule gave meaning to proviso which was not its probable meaning. It was within the powers of Legislature to make a rule, to remove an ambiguity in a clause in the Statute. "The word 'assess' is one which is susceptible of several different meanings. According to the

(2A) *Venkataramayya* v. *Mallikarjunudu*, 55 L.W. 288 : (1942) 1 M.L.J. 571 : 1942 M.W.N. 415 : 1942 M. 533.

(3) *Venkatarama Iyer* v. *Ayyasami Sastrigal*, 55 L.W. 780 : (1942) 2 M.L.J. 676 : 1942 M.W.N. 708 :—1943 M. 194 : I.L.R. 1943 M. 591: 205 I.C. 579.

(4) *Jikkini Biba Saheba* v. *Ranganayaki Ammal*, 55 L.W. 851 : (1942) 2 M.L.J. 487 : 1942 M. 258 : 207 I. C. 207.

(5) *Sarvesvararao* v. *Umamaheswararao*, 52 L.W. 765 : (1940) 2 M.L.J. 941 : 1940 M.W.N. 1192 : 1941 M. 152.

Dictionary it means 'to fix the amount of tax', or 'to determine the amount and impose the tax on the individual' or 'to estimate officially the value for purposes of taxation'. In view of these different meanings of which the word *'assess'* is susceptible, and of the fact that the liability to pay property tax under District Municipalities Act, depends primarily on ownership, can it be contended that the use of the word *'assessed'* necessarily implies the mere registry of an individual as the person liable and does not imply the full process of demanding the tax from the person as *owner* ? It seems to us that the matter is by no means free from ambiguity and that the use of the word 'owner' in the last sentence of the proviso gives considerable support to the view that the Legislature intended to disqualify from a claim to be an agriculturist only a person from whom tax had been demanded by virtue of ownership."[6]

Illustrations.—(*a*) *A* was assessed to house tax on properties having annual rental of only Rs. 300. His wife *B* has been similarly assessed on properties with a rental value of Rs. 432. Both the properties in the wife's (*B's*) name and the properties of *A* were covered by a suit mortgage executed by *A*. The contention that both the properties belong to *A* and assessment which was made in respect of these properties must be regarded as assessment of *A* is negatived and *A* is an agriculturist who does not come under the proviso.[6]

(*b*) *A* applied to scale down the decree as he is an agriculturist. The decree-holder contended that *A* is assessed to property-tax in respect of a house in a Municipality. *A* showed that he sold the house in February, 1935, and thereafter tax was paid by the purchaser. *A* is an agriculturist who does not come under the proviso.[6]

(*c*) A judgment-debtor was a usufructuary mortgagee of a house in a Municipality. He, describing himself as owner, has applied for vacancy remissions from the Municipality in respect of the house. The Municipality demanded tax from him treating him as the owner. In the Municipal register, the mutt mortgagor was shown as owner. Mortgagee paid tax before 1935. The judgment-debtor could not be held to have been assessed to property tax.[7]

(*d*) A receiver appointed under O. 40 r. 1. of C.P.C. represents whoever may be found ultimately entitled to the property as the result of the suit and if the owner of the property is the mortgagor, payment of tax by the receiver must be held to be a payment on behalf of and as representative of mortgagor so that the payment must be deemed to be a payment by mortgagor.[8]

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(6) *Iswaraiah* v. *Kannappa Chetty*, 53 L.W. 518 : (1941) 1 M.L.J. 605 : 1941 M.W.N. 400.

(7) *Tiruvengavalli* v. *Venugopala Pillai*, 54 L.W. [illegible] : (1941) 2 M.L.J. 497.

(8) *Namberumal Chetti* v. *Ramayya Naidu*, 55 L.W. [illegible] : (1942) 1 M.L.J. 561 : 1942 M.W.N. 391 : 1942 M. 602.

(e) Payment of land revenue by receiver in a partition suit is a payment by persons entitled to properties in respect of which the land revenue is paid.[9]

Therefore it follows that apart from the r. 7, a person who comes within the disqualification cannot escape therefrom by showing that some one else is the real owner of property in respect of which he has been assessed.[10]

Agricultural.--The question whether land is or not agricultural is largely a question of fact and the term 'Agricultural' as used in proviso (C) must be read in the sense in which it is used in the relevant sections of the District Municipalities Act and not in a narrow sense which might be spelt out of the definition of agriculturist in S. 3 (ii) (a).[11]

Joint family assessed.—Decree against a joint family as such which is assessed to house-tax on annual rental value of more than Rs. 600 cannot be scaled down as no member of it can be separately held to be an agriculturist for purposes of the Act.[12]

Assessment of manager of Hindu family individually to tax in respect of house of more than Rs. 600 rental value. The house belongs to family in fact. The family is not disqualified as manager's name only appeared in Municipal register as the owner of the house paying house tax.[13] If the assessment is in the name of the father and manager of the joint family, the other members being minors, the assessment being imposed on the assessee as representing the joint family, his sons, are disqualified from obtaining relief under the Act under S. 14.[14]

Assessee out of possession.—The judgment-debtor agreed to sell his lands situate within Union limits and put the intending purchaser in possession on or about June, 1930, and he was in possession when the Act came into force. The assessment alone continued to be in his (judgment-debtor's) own name. He pleaded that by virtue of S. 53-A of the Transfer of Property Act, he had ceased to be the owner of lands in the Union and therefore claimed to be an agriculturist. The judgment-debtor continued to be a non-agriculturist in spite of transfer of possession.[15]

Nature of Evidence.—A certificate by the President of Local Board that in respect of property of the debtor lying within the limits

(9) *Nalamuani* v. *Dakshayani Amma*, (1942) 1 M.L.J. 418 : 1942 M.W.N. 274 : 1242 M. 456 :

(10) C.R.P. 1580/38 : 53 L.W. (S.R.C.) 9.

(11) *Lingappa Bhandary* v. *Yamunamma*, 58 L.W. 87 (1): (1945) 1 M.L.J. 2 : 1945 M.W.N. 41 : 1945 M. 148.

(12) C.R.P. 1146/39 ; 53 L.W. (S.R.C.) 8.

(13) *Muthia Chettiar* v. *Rayaloo Ayyar*, (1943) 2 M.L.J. 548 : 1943 M.W.N. 683 : 1944 M. 98.

(14) *Ramanathan Chettiar* v. *Nagaswami Chettiar*, 58 L.W. 172 : (1945) 1 M.L.J. 238 : 1945 M.W.N. 211 : 1945 M. 301.

(15) *Subramanya Chettiar* v. *Subbaiah Mudaliar*, C.M.A. 586 and 604/1938 : 52 L.W. (S.R.C.) 44 : (1940) 2 M.L.J. (N.R.C.) 44.

of a Local Board, assessment has been made in the name of the usufructuary mortgagee and not in debtor's name should be accepted by the Court as a certificate that the debtor is not assessed, even though his name is included in the notice of demand in respect of the assessment on the principle that an individual must have been actually assessed and it is not sufficient to show that he is interested in property assessed.[16] The certificate of a Local Board is not conclusive and it is open to the other side to let in evidence to show that there is an error in the amount of tax or nature of income in respect of which it was levied.[17] The contention that for the purpose of proviso (C) the Court can go into evidence not merely as to the correctness of the certificate but also as to the propriety of assessment on the basis of which the person is to be qualified or disqualified as an agriculturist is unsustainable. If in fact there has been an assessment at a certain rate it is this assessment which must govern the application of proviso (C) and not some theoretical figure which might have been, but was not adopted.[18]

Panchayat.—Mere fact that property was situate within a Panchayat does not operate to exclude its owner from the benefits of the Act unless the Panchayat was a Union before 26th August, 1930 (*i.e.*), was a union formed under the Madras Local Boards Act, XIV of 1920, which was modified by Act XI of 1930.[19]

Explanation.—This explanation gives out the method to arrive at the "*annual rental value*". The rental value must be calculated at 5 per cent. of capital value. Under the explanation it is not open to the Court to take evidence of actual rent paid and capitalise this on 5 per cent basis and hold that the capital value on which the assessment was based, was not the actual figure adopted but the fictitious figure thus calculated.

Illustration.—*A* was owner of two buildings, one bearing a capital value of Rs. 3,000 and other a capital value of Rs. 3,150. The rental value must be calculated at 5 per cent of the capital value, it being less than Rs. 600, he was entitled to the benefits of the Act.[20]

Proviso D.—In opposing the amendment proposing deletion of this proviso, the Premier stated that by the omission of this proviso, every landholder would be in the same position as the agriculturist defined *supra*, for getting his debts scaled down. The amendment was lost. The clause engrafts certain limits within which the Zamindar, Inamdar and the Jenmi who fundamentally differ from an 'agriculturist' are classified to procure relief under the Act. They live on agriculture and not by agriculture.

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(16) C.R.P. 1129/39; 51 L.W. (S.R.C.) 11: (1939) 2 M.L.J. (N.R.C.) 96.

(17) *Kamakshi Chetti* v. *Alagappa Chettiar*, 52 L.W. 430: (1940) 2 M.L.J. 468 (1): 1940 M.W.N. 948: 1941 M. 73 (1).

(18) *Venkata Satyanarayanamurthi, In re*, 53 L.W. 105: 1941 M.W.N. 173: (1941) 1 M.L.J. 185: 1941 M. 413.

(19) C.R.P. 674/39; 50 L.W. (S.R.C.) 71.

(20) *Subbaramayya* v. *Subbayya*, 53 L.W. 391: (1941) 1 M.L.J. 498: 1941 M.W.N. 291.

Rs. 500—Peshkush.—In opposing an amendment proposing to reduce this to Rs. 300, the Premier replied "It is the occupation and not quantity that I am concerned with and that is the principle here. The word 'landholder' is a technical expression in the Estates Land Act. Very small landholders must be given the benefit of this Act. It does not matter where we draw the line, so long as we draw the line somewhere." The amendment was lost.

Rs. 100—Quit-rent, etc.—Amendments to extend the benefits of the Act to those who pay higher amount like Rs. 250 or Rs. 300 were proposed in the Assembly and Council. In the course of reply in the Council, the Premier stated : " It is not intended to cover cases of the grant of mokhasas and under-tenure-holders. It is intended only to cover those who are directly responsible for the cultivation of the land, that is to say, those who have their occupancy rights in the soil. Whatever may be the size of the inam, and whatever the share of the inam may be, the person who pays a sum of Rs. 100, and below is included merely because his is such a small estate that probably in many cases, he would be also in direct contact with the land. No doubt it may be pointed out that it would be impossible to mark out nicely and scientifically as between holder and holder. But the higher up we proceed, he would be a tenure or an under-tenure-holder instead of being a holder of land himself. That is the reason why such people have been excluded ; not because they are well off or ill off. If the figure is put up to Rs. 300 so many other cases would be covered and would disturb the balance."

Jenmi Tenure.—An amendment was moved by Mr. R. M. Palat for the deletion of the words " Or is a Jenmi under the Malabar Tenancy Act, who pays any sum exceeding Rs. 500 as land revenue to the Government." In support of the amendment it was claimed that this omission would place the Jenmi on an equal footing with the ryotwari-holder as the Jenmam tenure was similar to the ryotwari tenure. The Premier, in opposing the amendment, said : " I submit that it (deletion) would at once introduce into the measure a new policy altogether. In no sense of the term Jenmi can be treated as an agriculturist. On account of the peculiar characteristic of the tenure, there may be some contact between the ryotwari-holder and the Jenmi, but there are more points of difference than points of identity between the ryotwari-holder in the East Coast and the Jenmi on the West Coast. For instance, a Jenmi could not evict his tenant as the ryotwari landholder could. It is only on that ground that the Jenmi is excluded from the provisions of this Bill."

Ryotwari Pattadar.— An amendment proposing to insert the words " Ryotwari pattadar " before " who pays any sum exceeding Rs. 500 as land revenue to the Provincial Government " was moved, on the ground that big ryotwari landholders should not be entitled to the benefits of the Act. Mr. Appadorai moved an amendment to limit the relief to ryotwari pattadars paying a land revenue not exceeding Rs. 250. The Premier replied that fixing a monetary limit would not serve the

underlying purpose of the Bill and that is why a member of residential and occupational restrictions were introduced. But, instead of putting aside bigger landlords by having a monetary limit, they were excluding from the benefits of the Bill, those who were certain tax-payers above a certain limit. The intention was to distinguish the agriculturist classes from those following occupations other than agriculture. An agriculturist who was paying, say Rs. 1,000, land revenue was indebted in proportion to his property in the same manner as an agriculturist who paid Rs. 50. If they wanted to distinguish the occupation of agriculture, they must go by professions. That was why they adopted a complicated method rather the one fixing a monetary limit.

The quit-rent, etc., or the like.

The words "or the like" following "quit-rent, jodi, etc." must be taken to denote any other payment in the nature of quit-rent on inams and do not include charges for roads, Police or water and similar dues levied for services rendered by the State or by a local authority.[21]

Quit-rent.—A certain small rent, payable by the tenant in token of subjection, by which the tenant goes quiet and free. This is a small yearly payment made by owners of land to a more or less nominal landlord (*Law Lexicon* of Madras Law Journal Office).

· The petitioner was admittedly a mokhasadar paying Rs. 150 per annum to the zamindar under ancient tenure the origin of which was obscure. A proposal to enfranchise the inam fell through at the time of Inam Commission, and the lands continued to be held on a payment varying with the yield of Rs. 4 per putti upto 1889 in which there was an agreement between zamindar and mokhasadar, that instead of this varying payment an actual sum of Rs. 600 should be paid towards cist, the mokhasadar pledging to pay the cesses. It was contended that this annual payment of which the petitioner defendant's share is Rs. 150 could not be described as quit-rent, etc., to disqualify him under Proviso (D). The mokhasadars are landholders holding their estate on a fixed favourable rate of rent which is in the nature of quit-rent.[22]

Jodi.—An easy rent or quit-rent, a personal tax on District Officers (*Wilson's Glossary*, p. 241). A payment combining quit-rent and jodi amounting to more than Rs. 100 attracts the disqualification of proviso. Jodi is a vernacular term which means quit-rent.[23]

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(21) *Chandrasekhara Ayyar* v. *O. R., West Tanjore*, 52 L.W. 494: (1940) 2 M.L.J. 461: 1940 M.W.N. 946: 1940 M. 915.

(22) *Sarangapani* v. *Venkataratna*, 55 L.W. 610; (1942) 2 M.L.J. 421: 1942 M.W.N. 721: 1945 M. 733.

(23) *Sankarayya* v. *Thanammal*, 55 L.W. (S.R.C.) 14 (1) (*b*); (1942) 1 M.L.J. (N.R.C.) 24 (2).

Katubadis.—A revenue term for usually fixed, invariable and favourable or quit-rent which has been assessed on lands (*Wilson's Glossary*, p. 273). Kattubadi is in the nature of rent.[24] The criterion for application of proviso is the amount of kattubadi which ought to be paid and not the amount of kattubadi which is actually paid. It is preposterous to contend that in a particular year or series of years the landholder manages to evade payment of lawful kattubadi, he is not landholder of an estate in respect of which kattubadi is paid within the meaning of proviso. The criterion must not be actual money which Government or superior landholder succeeds in recovering but the proportionate share which the individual owner of a part of estate has to pay in respect of share which he owns.[25]

Estate.—The proprietor of a zamindari which was settled permanently in 1803, made in 1809 a grant of land forming only a portion of a village in zamindari to the holder of karnam service in the village. In 1833, as a result of rebellious acts, the zamindari was forfeited and the estate was declared to be land belonging to the Government. But the holders of service inam land continued in possession and their holding was enfranchised in the Inam Commission proceedings of 1863 on payment of a quit-rent fo Rs. 82–10–5. Since that date, these lands have been held as an inam holding situate within a Government village. The said inam lands are not an estate or part of an estate in respect of which the owners could be regarded as landholders within the meaning of the proviso and the fact that historically the inam was century ago part of an estate would have no bearing on its present status[26].

Co-owner.—In the case of a co-owner, his proportionate liability has alone to be taken into consideration.[27]

Jenmi.—A jenmi whose total payments to the Government on account of land revenue both as jenmi and ryotwari pattadar exceed Rs. 500, is not entitled to the benefits of the Act, even though in his capacity as a jenmi he pays less than Rs. 500.[28]

A share in Shrotriam.—When a debtor owns only a share in Shrotriam and his liability for his own share of the jodi is less than Rs. 100 he does not cease to be an agriculturist and is entitled to the benefits of the Act although theoretically he may be liable to the Government

(24) *Suryanarayana* v. *Apparao Bahadur*, 29 L.W. 600 : 115 I.C. 351 : 56 M.L.J. 273.

(25) *Dugarajulu Garu* v. *Aryan Bank of Vizagapatam*, 56 L.W. (234) : (1943) 1 M.L.J. 333 : (1943) M.W.N. 269 : 1943 M. 586 : 209 I.C. 333.

(26) *Vijayaratnam Naidu* v. *Sitapati Rao Pantulu*, 56 L.W. 15 : (1943) 1 M.L.J. 90 : 1943 M.W.N. 9 : 1943 M. 263 : 207 I.C. 89.

(27) *Lakshmanaswami* v. *Raghavachari*, 56 L.W. 141 : (1943) 1 M.L.J. 104 : 1943 M.W.N. 26 : 1943 M. 272 : I.L.R. 1943 M. 717 : 210 I.C. 98.

(28) *Mammad* v. *Narayana Pattar*, 52 L.W. 835 : (1940) 2 M.L.J. 934 : 1941 M.W.N. 34 : 1941 M. 305 ; *Narayana Nambudripad* v. *Achutan Aiyar*, (C.R.P. 1638 and 1886/1939), 53 L.W. (S.R.C.) 72 : (1941) 1 M.L.J. (N.R.C.) 53 : 1941 M.W.N. (N.R.C.) 51 (1).

for the whole of jodi due on the Shrotriam.[29] A landholder in respect of more than one estate and paying more than Rs. 500 as peishkush in the aggregate comes under proviso (D), though peishkush for each estate is less than Rs. 500. A landholder under S. 3 (5) of the Madras Estates Land Act is a person owning an estate and includes every person entitled to collect the rents of the estate. There is no doubt that in respect of the Estate which was purchased in Court auction in the name of the applicant, he was either the owner or person entitled to collect rent.[30] Where an owner of kudivaram interest in respect of certain lands in an Estate paying Peishkush of Rs. 1,200 acquires by purchase the zamin-right and subsequently usufructuarily mortgaged the zamin-right, retaining the ryoti lands and becoming a tenant of his mortgagee and the mortgagee got himself registered as landholder by Collector, what the proviso has in contemplation is the qualification of ownership of the zamin interest rather than the qualification of a recognition by the Collector as landholder and hence mortgagor must be deemed to be a landholder under the proviso, notwithstanding recognition of mortgagee as landholder by Collector.[31]

Landholder and aggregate of Peishkush.

Benamidar.—As under S. 3 (5) of the Madras Estates Land Act, a landholder is one entitled to collect rent, a benamidar of an estate comes under this proviso.[32]

Areas transferred to Orissa.—A person must possess agricultural or horticultural land in the province of Madras before he can at all become entitled to claim the benefits of the Act. The words "Landholder of an estate under Estates Land Act" are applicable as well to an estate in the areas transferred from Madras Presidency to Orissa Province as to an estate which remains in the area constituting Madras Province.[33]

Change in Law.—As the previous provision is apt to be interpreted as requiring that the share or portion should have been registered in order to make the landholder owning a share or portion of an estate ineligible for benefits of the Act, it is now amended by inserting words "whether separately registered or not" to include both categories. The word "Paid" has been construed that the peishkush, etc., should have been actually paid. In order to bear out the intention of Legislature clearly, the word, "Payable", who is liable *as such* jenmi to

(29) *Srinivasayya v. Obula Raju*, (C.R.P. 1689 and 1690/39), (1941), 1 M.L.J. (N.R.C.) 34 : 1941 M.W.N. (N.R.C.) 38.

(30) *Narayanaswami Reddi v. Veeraswami*, 52 L.W. 521 : (1940) 2 M.L.J. 711 : 1940 M.W.N. 1043.

(31) *Rangaswami Reddi v. Gopala Krishna Reddi*, 52 L.W. 832 : (1940) 2 M.L.J. 883 : 1941 M.W.N. 31 : 1941 M. 200.

(32) *Sundara Rao v. Kusulram Ayya*, 59 L.W. 319 ; (1946) 2 M.L.J. 72 : 1946 M.W.N. 422 : 1946 M. 434 : 227 I.C. 496.

(33) *Narasinga Rao, v. Surayya Raju*, 55 L.W. 643 ; (1943) M.L.J. 457 : 1943 M. 91 ; I.L.R. 1943 M. 370 : 207 I.C. 175 upheld by Fedral Court in 57 L.W. 301 : (1944) 1 M.L.J. 356 : 1944 M.W.N. 246 : (1944) F.C. 31.

pay is inserted. It has also been brought out clearly that if a jenmi is not to be regarded as an agriculturist under the proviso, he should be liable to pay to Government more than Rs. 500 as land revenue in his capacity as a jenmi.

Section 3 (iii) : Debt.—The debt is used in this clause in a very comprehensive signification. Debt includes a decree debt.[34] A debt evidenced by or based on a pronote becomes merged in decree as soon as a decree is passed and that decree has become in turn a judgment-debt.[35] The definition does not connote that a debt must be one with reference to which the debtor is personally liable. The reference to liability in the clause is wide enough to cover every person who is in any manner liable or liable on account of possession of property.

Personal liability.

ILLUSTRATIONS.

Purchaser of equity of redemption.—(1) A purchaser of mortgaged property is a person liable to pay the debt due under the mortgage and can therefore claim benefit under the Act.[36]

(1) (*a*) A person who had on 22-3-1938 only a contract for sale of hypotheca in respect of which he had made a payment and who was disputing his liability to pay full stamp duty on the sale deed to be executed, cannot be said to have owned any interest in the hypothecated land so as to make him liable to discharge the debt due thereunder and was not entitled to relief under Ss. 8 and 9 as a debtor. Where a person purchases the hypotheca, he is not entitled to have a scaling down of the mortgage debt with respect to antecedent debts for which the mortgage had been executed, where mortgagors are given relief under the Act and burden on the property is thereby lightened, the fortuitous benefit of the relief will be enjoyed by a subsequent purchaser though the latter is not entitled to claim the benefits of the Act. This benefit cannot be claimed as of right by the purchaser who is not an agriculturist when the mortgagors have not claimed such benefit nor have they adduced any evidence to show that they are agriculturists.[36]

Liability of Son.—(2) A decree allotted certain properties to a Hindu father and also created a charge on these properties for the repayment of the amount taken by him in excess of his share. Pending the suit in which that decree was made, father entered into partition with his son charging the abovementioned properties (his share) covering also properties which were taken by son under partition. The liability of the son is a debt to be scaled down.[37]

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(34) *Ramaseshayya v. Kutumbarao*, 52 L.W. 173 : (1940) 2 M.L.J. 235 : 1940 M.W.N. 770 : 1940 M. 793 : I.L.R. 1940 M. 943.

(35) *Nagarathnam v. Seshayya*, 49 L.W. 257 : (1939) 1 M.L.J. 272 : 1939 M. 341 : I.L.R. 1939 M. 151 : 180 I.C. 994.

(36) *Periana Gounden v. Sellappa Gounden*, 48 L.W. 954 : (1938) 2 M.L.J. 1066 : 1939 M.W.N. 106 : 1939 M. 186 : I.L.R. 1939 M. 218.

(37) *Veerathamma v. Narayanaswami Ayyar*, 50 L.W. 636 : (1939) 2 M.L.J. 743 : 1939 M.W.N. 1077 : 1940 M. 95.

Liability of Widow.—(3) Decree passed against assets of a deceased husband in the hands of a woman. She is a judgment-debtor under S. 19 and entitled to apply for relief.[38]

Lessee of Mortgagor.—(4) Usufructuary mortgagee's suit for possession is a suit to enforce the debt and subsequent lessee of the mortgagor is entitled to discharge the mortgage and so can raise a point as to scaling down.[39]

Puisne Mortgagee.—(5) A puisne mortgagee impleaded by a prior mortgagee in his suit and given a right of redemption of prior mortgage is liable to pay the amount due to the first mortgage.[40] This is recognised in other cases apart from the Act.[41]

Creditor includes heirs, assigns, etc.—The word "creditor" has been defined in clause (v) to include heirs, legal representatives and assigns. There is no corresponding definition of debtor. This omission is obviously due to the fact that the reference to liability in clause (iii) is wide enough to cover any person who is in any manner liable either because he is personally liable or because he is liable on account of the possession of property. There is no necessity to refer to any heir, legal representative or assign except in case in which such person was liable within the meaning of cl. (3).[42] Where in respect of a pronote a decree was obtained against the daughter of the maker of note to the extent of assets of the maker in her hands as heir, the daughter is entitled to claim the benefits of the Act as a debtor.[43] The Act is intended to benefit the agriculturist as such and no other. The heirs, legal representatives and assigns of a debtor cannot take advantage of the Act unless they themselves are agriculturists within the meaning of the Act. If the liability of a non-agriculturist devolved on an agriculturist, either by act of parties or by operation of law, it becomes a liability due from an agriculturist.

Liability to make restitution.—Debt includes liability to make restitution.[44] The liability to restore with interest the money deposited by a party under O. 21, r. 89 of the Code of Civil Procedure for setting aside a sale, after the sale has been reversed, is a debt within this clause.[45] The liability to make restitution is a debt and it

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(38) (C.R.P. 968/38), (1939) 2 M.L.J. (N.R.C.) 63.

(39) *Varahalayya* v. *Raju*, (1940) 1 M.L.J. 292 : 1940 M.W.N. 917 : 1941 M. 21.

(40) *Periaswami Chettiar* v. *Ramaswami Gounden*, 52 L.W. 481 : (1940) 2 M.L.J. 513 : 1940 M.W.N. 1010 : 1941 M. 113 ; Overruling *Narayana Chari* v. *Annamalai Chettiar*, 50 L.W. 150 : (1939) 2 M.L.J. 225 : 1939 M.W.N. 736 (1) 1940 M. 61 (*Newsam, J.*).

(41) *Thiruappa Chetti* v. *Krishna Rao*, 51 L.W. 453 at 460.

(42) *Perianna Gounden* v. *Sellappa Gounden*, 48 L.W. 954 : (1938) 2 M.L.J. 1038 : 1939 M.W.N. 106 : 1939 M. 186 : I.L.R. 1938 M. 218.

(43) *Seethalakshmi* v. *Nagaswami Ayyar*, (C.R.P. 614/39), 53 L.W. (S.R.C.) 58 : (1941) 1 M.L.J. (N.R.C.) 46.

(44) *Vasantharao* v. *Narayanaswami Ayyar*, 50 L.W. 636 : (1939) 2 M.L.J. 745 : 1940 M.W.N. 1077 : 1940 M. 95.

(45) *Rasappa* v. *Palamudipillai*, (A.A.A. 173/38), (1940) 2 M.L.J. (N.R.C.) 14.

is no less a debt when due from the son of the original party by reason of his possession of family properties after partition.[46]

Liability of Co-owners.—The relation between co-owners when one of them is in possession of common funds is not that of a creditor and a debt and his liability to pay over the interest realised to the other is not a debt.[47]

Debt due by members of Firm.—A debt incurred by a partnership is really a debt incurred by the partners, for which each of them is liable and where a partner so liable is an agriculturist, he is entitled to apply for benefits of the Act.[48]

Unascertained amount, Advance by Partner to Partnership.—Debt does not include an unascertained amount[49] and does not therefore include a liability in respect of an advance made by a partner to a firm of agriculturists of which he is a member, since such advance does not entail a liability by the partners to repay that advance but merely a right in equity to have a claim on the assets to the extent of the advance at the time of dissolution of the partnership. Debt is defined as any liability. It must mean a legal liability, a liability enforceable at law.[50] In the case of a transfer of an actionable claim, there can be a debt even though some calculation may be necessary to ascertain how much it is.[51] Debt must be taken to have been used in the clause in its ordinary meaning of a sum payable in respect of a money demand recoverable by action.[50]

Deposit or bailment.—An amendment seeking to exclude liability arising out of deposit or bailment was proposed and lost. Such cases therefore come under debt.

Sum due on accounts.—A sum which may or may not be due if the accounts are taken is not a debt.[52]

Contingent debt.—Debt is not merely a sum which may or may not become payable at some future time, or payment of which depends on contingencies which may or may not happen.[53] It must be a liquidated amount though it may be unproved.[54] A suit for refund of the price of goods sold but not delivered is a suit for recovery of a debt.[55]

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(46) *Bhonsle* v. *O. R., West Tanjore*, 53 L.W. 69 : (1941) 1 M.L.J. 467 : (1941) M.W.N. 95.

(47) *Mothai Meera* v. *Abdul Khader*, 49 L.W. 391 : (1939) 1 M.L.J. 528 : 1939 M.W.N. 279 : 1939 M. 471 : I.L.R. 1939 M. 525.

(48) *Pitchayya* v. *Subbayya*, 53 L.W. 497 : (1941) 1 M.L.J. 609 : 1941 M.W.N. 570.

(49) *Doraiswami* v. *Vaithilinga*, 40 M. 31 (F.B.).

(50) *Sattiraju* v. *Venkatasatyam*, 53 L.W. 191 : (1941) 1 M.L.J. 36 : 1941 M.W.N. 49 : 1941 M. 410.

(51) *Madhu* v. *Achi*, 40 L.W. 525 : 67 M.L.J. 158 : 57 M. 1074.

(52) *Sabju* v. *Noordin*, 22 M. 139.

(53) *Acharjia* v. *Acharjia*, 27 C. 38.

(54) *Khan* v. *Prasad*, 14 M.I.A. 40 (50).

(55) *Kotha Pinta* v. *Varithi Reddi*, 2 M.L.J. 34.

Annuity, etc.—Debt means a debt either due or accruing due and does not include any annuity which has not fallen due.[56]

Rent under Contract.—The definition of 'debt excludes rent as defined by clause (*iv*). So, rent due under a khat was a debt as defined by clause (iii). There is no reason to exclude from the definition of debt ordinary contractual rent falling within S. 3 (*iv*).[57]

Rent in arrears is a debt.[58]—Rent in respect of a period still in existence is no debt at all as the obligation is not complete.[59]

Dividend.—A dividend declared by a Company after its due date, is a debt from the Company. A dividend is not a debt until it has been declared.[60]

S. 3 (iii) (a)—This sub-section is added newly by the Amending Act XXIII of 1948, Madras. Any amount or thing paid or payable in excess of the borrowing will come within the scope of the interest.

Section 3 (iv) : Rent.—Rent is defined in S. 3 (*ii*) of the Madras Estates Land Act as follows :—

'Rent' means whatever is lawfully payable in money or in kind or in both to a landholder by a ryot for the use or occupation of land for the purpose of agriculture and includes whatever is lawfully payable on account of water supplied by the landholder or taken without his permission for cultivation of land when the charge for water has not been consolidated with the charge for the use or occupation of the land.

For the purpose of Ss. 5, 27, 28, 29 to 72, 77 to 131, 135, 136, 145 to 148, 165, 210 and 211 and the schedule, rent includes also, " (*a*) any local tax, cess fee, or sum lawfully payable to a landholder by a ryot as such in addition to the rent due according to law or usage having the force of law and also money recoverable under any enactment for the time being in force as if it was rent ; and (*b*) sums lawfully payable to a landholder by a ryot as such on account of pasturage fees and fishery rents." The sums payable under classes (*a*) and (*b*) are not rent proper within the meaning of the Estates Land Act and the above definition merely extends the procedure prescribed in the said Act for recovery of arrears of 'rent' due on the holding, to the recovery of these sums as well. So, these sums cannot be deemed to be rent for the purpose of scaling down under S. 15 (*vide* S. 16 also). The rent payable by a tenant of the landholder's *private land* is not included in the definition of 'rent' under the Estates Land Act, so arrears of such will not come under S. 15 but have to be dealt with as *debts*.

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(56) *Ayyavarayar* v. *Viraswami Mudali*, 21 M. 393 ; *Asad Ali Mulla* v. *Hyder Ali*, 38 Cal. 13.

(57) *Rajasekharaswami* v. *Punnayya*, (C.R.P. 260/39) 53 L.W. (S.R.C.) 36 : (1941) 1 M.L.J. (N.R.C.) 35.

(58) *Roy Jatindranath Choudari* v. *Prasanna Kumar Banerji*, 38 C. 270 : 9 M.L.T. 1 (P.C.).

(59) *Lachman* v. *Jar Bandhan*, 1928 All. 193 : 50 All. 507 ; 108 I.C. 229.

(60) *Severn, etc., Ry.; In re ;* (1896) 1 Ch. 559.

Right to collect rent assigned. The proprietor of an estate leased out the right to collect the jodi and the contract provided that the lessee was to pay an annual amount of Rs. 200 in return for the assignment. This annual payment of Rs. 200 is an ordinary contractual rent paid by the lessee not as jodi, but as consideration for the leasing of the right to collect jodi from a third person. Even if the right is sold to the person or one of the persons who himself has to pay such jodi, the nature of the payment to the proprietor will not be changed. Accordingly this amount payable annually is not 'rent' under this Act and arrears for earlier faslis cannot be cancelled by deposit under S. 15.[61]

Rent or Michavaram. Rent is defined in S. 3 (r) of the Malabar Tenancy Act as follows: "'Rent" means whatever is lawfully payable in money or in kind or in both to a person entitled to the use and occupation of land, by another, permitted by the person so entitled to have the use or occupation of the said land, for any purpose, on the understanding, express or implied, that the person so permitted would pay consideration for such use or occupation."

"'Michavaram' means whatever is agreed by a Kanomdar in a Kanom deed to be paid periodically, in money or in kind or in both, to or on behalf of the jenmi". [S. 3 (q), Malabar Tenancy Act.]

Kanartham payable by jenmis or other landholders in Malabar is specifically excluded from the definition of debt and kept out of the operation of the Act, the interest thereon being saved from being scaled down by S. 10 which excludes possessory mortgages like Kanom.

Does not include costs or share of land cess.—Costs incurred in respect of recovery of rent and land cess recoverable by the landholder under S. 88, Madras Local Boards Act, will not be treated as rent. S. 16 makes special provision for the recovery of these costs only awarded in the decree. Therefore the costs of execution and costs of distress by the landholder are equally recoverable as debts subject to Ss. 8 and 9 of the Act.

Kattubadi.—Kattubadi, jodi or quit-rent payable by an Inamdar to the Zamindar is not rent and the Inamdar cannot have the benefit of the provisions of S. 15.[62]

Purappad, Jodi, etc.—The surplus reserved as payable to mortgagee (Purappad) under a possessory mortgage (*Kaivasam Panayam*) after apportioning part of usufruct in lieu of interest due on mortgage money is not rent.[63]

Jodi payable to a landholder by the proprietor of an Agraharam village situate in a Zamindari is rent in respect of which relief is claimable under S. 15 (4).[64]

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(61) *Ramanuja Ayyangar v. Govindarajulu Naidu*, C.R.P. 1637/1939; (1944) 2 M.L.J. (N.R.C.) 63.

(62) (C.R.P. 205, etc., 1939); 51 L.W. (S.R.C.) 55.

(63) *Vasudev v. Raman*, 52 L.W. 639: (1940) 2 M.L.J. 712: 1940 M.W.N. 1126: 1940 M. 939.

(64) *Raja of Venkatagiri v. Ramanujulu Chettiar*, (C.R.P. 1329/1939), 53 L.W. (S.R.C.) 52: (1941) 1 M.L.J. (N.R.C.) 45: 1941 M.W.N. (N.R.C.) 49.

Tree tax.—Tree tax is not rent within the meaning of the Act and a ryot in possession of trees in a holding is not entitled to relief under the Act in respect of tree tax.[65]

Panya Kychits.—In the case of what are known as *Panya Kychits* when the general tenor is to refer to a mortgage of land on which a theoretical rent is fixed and out of that rent part goes towards the interest due on the mortgage, part towards the assessment and the balance is payable to the mortgagor and when there is also a clause to the effect that, if the mortgagor comes to redeem the mortgage, he would be entitled to deduct the arrears of this so-called rent. the amount payable to the mortgagee is not rent to which S. 15 applies but a contractual payment under the mortgage.[66]

Section 3 (v) : Creditor.—The definition of the creditor was included by the Select Committee. The definition does not warrant an extended interpretation of the term 'creditor' as including a person beneficially entitled to the amount lent (*i.e.*, the creditor in the ordinary sense of the term signifies a person to whom money is due).[67]

Endorsee.—A pronote which was made up partly of cash consideration and partly of interest due under a mortgage was sought to be scaled down as against an endorsee of the note. The endorsee comes within the definition of a "Creditor" and he is an assignee of the promisee. S. 120 of the Negotiable Instruments Act does not prevent the setting up of a discharge by virtue of a subsequent statute to the extent that the pronote was for interest on mortgage.[68]

Equitable assignee.—The 'creditor' does not include an equitable assignee whose legal title has to be enforced by an entirely new contract with the debtor.

If there was a writing at the time of partition in a joint Hindu family evidencing the allotment of a debt to a person, that would be a legal assignment giving that person. the position of a creditor, and the assignee of the former creditor would be the same creditor. If the debt is a mortgage debt, the partition deed must be a registered one. (*Govinda Nair* v. *Srinivasa Pattar*, 1949 M.W.N. 81).

ILLUSTRATIONS.

As a result of partition, or other arrangement a debt due to a family becomes split up into a number of individual pronotes, etc., in favour of the members. They may in one way be regarded as notes in favour of equitable assignees (the divided members of the family) of the original creditor, the joint family.[69]

(65) (C.R.P. 2121/1939), (1940) 1 M.L.J. (N.R.C.) 46.

(66) *Valliaraja* v. *Kochayissa*, (C.R.P. 840 to 850/1939), 53 L.W. (S.R.C.) 60 : (1941) 1 M.L.J. (N.R.C.) 60 : 1941 M.W.N. (N.R.C.) 50 (2).

(67) *Varadarajam Pillai* v. *Krishnamurthi Pillai*, 52 L.W. 595 : (1940) 2 M.L.J. 664 : 1940 M.W.N. 1067 : 1941 M. 321 : I.L.R. (1941) M. 248.

(68) *Karuppan Govindan* v. *Narayanasami & Co.*, 54 L.W. 577 (1941) 2 M.L.J. 808 ; 1942 M. 169.

(69) (C.R.P. 1308/1939), 53 L.W. (S.R.C.) 29 : 1941 M.W.N. (N.R.C.) 34.

But when a pronote stands in the name of the father which was renewed in the name of the son, the latter comes under the definition of a creditor as the creditor remains the same, *i.e.*, the joint family.[70]

Successive Assignees. The definition 'creditor' extends not only to a first assignee but also to the subsequent assignees. The number of links in the chain of succession makes no difference. The point simply is that the ultimate assignee has, in respect of the debt, succeeded to the legal right of original creditor in strictly the same sense as the first assignee has.[71]

Several difficulties will arise as to the application of the Act, such as the cases where the contract is made in the province of Madras to be performed in another province and assigned to a resident of this province or a resident of another province. The Act does not deal with such questions and the general law applies. The general principle is that the law of contract is the law of the place where the contract is made, (*i.e.*) the *lex loci contractus*.[72] When the contract is made in one country to be performed in another country, the law of the place where contract has got to be performed governs so far as performance is concerned.[73] A contract which is to be executed partly in one country and partly in another country, may be governed by the land of each country.[74]

In the case of Negotiable Instruments (*vide* S. 134 of the Negotiable Instruments Act) the law of the place where they were executed or made payable governs. An amendment proposing that assignees should recover the amount of consideration for the assignment was lost.

S. 3 (vi): Mortgagee. The definition of mortgagee includes his heirs, legal representatives and assigns. This is added newly by the Amendment Act XXIII of 1948 to cover up cases of mortgagee creditors in view of the new S. 9 (A) added.

Certain debts and liabilities not to be affected.

4. Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads :—

(*a*) any revenue, tax or cess payable to the Provincial Government or any other sum due to them, by way of loan or otherwise ;

(*b*) any revenue, tax or cess payable to the Central Government or any other sum due to them, by way of loan or otherwise ;

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(70) (C.R.P. 1062/39), (1939) 2 M.L.J. (N.R.C.) 95.

(71) *Kodanderamayya* v. *Venkatareddi*, 52 L.W. 484 (1): (1940) 2 M.L.J. 553 : 1940 M.W.N. 1044 : 1941 M. 74 (1).

(72) *Lloyd* v. *Guibert*, (1865) L.R. 1 Q.B. 115.

(73) *Benaim* v. *Debono*, (1924) A.C. 514 (520).

(74) *Re Mackenzie*, (1911) 1 Ch. 578.

(c) any tax or cess payable to any local authority or any other sum due to them, by way of loan or otherwise;

(d) any debt contracted on the security of house property alone in a municipality, a cantonment, or a panchayat which was a union before the 26th August, 1930;

(e) any liability in respect of any sum due to any Co-operative Society, including a land mortgage bank, registered or deemed to be registered under the Madras Co-operative Societies Act, 1932, or any debt due to any corporation formed in pursuance of Act of Parliament or of any special Indian Law or Royal Charter or Letters Patent;

(f) any liability arising out of a breach of trust;

(g) any liability in respect of maintenance whether under decree of Court or otherwise;

Amended by S. 3 of Act. XXIII of 1948.

(h) any debt or debts due to a woman on the 1st October, 1937, who on that date did not own any other property, provided that *the value of the property owned by her on that date, including the principal amount of debt or debts so due, did not exceed Six thousand rupees.*

Explanation.—For the purpose of this clause, the house in which the creditor woman lived, or any furniture therein, or her household utensils, wearing apparel, jewellery, or such like personal belongings shall not be regarded as property.

(i) any wages due to any agricultural or other rural labourer:

Provided that where the liabilities mentioned in clause (e) arise by reason of an assignment to the Co-operative Society, such assignment has taken place before the 1st October, 1937, or is an assignment to such society of a loan granted by a Co-operative Society.

NOTES.

This section enumerates the categories of liabilities which are exempted from the operation of the Act.

Clauses (a) **to** (c).—Clauses (a) to (c) exempt debts due from agriculturist to the Provincial Government, or Central Government

or Local Authorities. The Premier explains the reason as follows: "If revenues, taxes and cesses were written off, no object or advantage would be gained for the people by the passing of this Act. If revenues, taxes and cesses were exempted, it was, because they were necessary for ordered administration. The procedure adopted by the Government in granting loans and collecting them was different from that adopted by private individuals. Further, the writing off loans or interest thereon was a matter of executive action, and that course was available, and need not be dealt with by legislation. The Government cannot afford to and not leave interest on loans to get into arrears as private creditors do and thus leave a burden, by sheer charity it may be, but too great for the debtor to bear."

S. 4 (a).—Where a person in possession of a property, practically in the capacity of a receiver of Court has paid the revenue therefor to the Provincial Government and subsequently brings a suit for recovery of the amount so paid from the defendant who was originally liable to pay the revenue, the defendant is not entitled to have the liability scaled down, since the same is in respect of the revenue coming within S. 4 (a). The expression 'Liability falling under the head of revenue due to Government' does not imply that the liability to pay the revenue to Provincial Government should be subsisting or that the suit itself should be directly by the person entitled to claim the revenue for recovery of revenue as such.[75]

Rent due to District Board.—Under S. 63 of the Madras Local Boards Act the administration of a Chatram was made over by the Board of Revenue to a District Board. A decree was obtained against a lessee of certain properties which formed part of that trust by the Board in respect of arrears due under lease. The money payable under decree comes within clause (c) as a sum due to local authority and the defendant was therefore outside the protection of the Act.[76]

S. 4 (c).—When the rent is paid to a District Board as Manager of a Chatram estate, it is a payment to District Board as such of money which goes into the funds of District Board, though earmarked for a particular purpose. The payment of rent in such circumstances would come within the category of "any other sum due to them by way of loan or otherwise", in S. 4 (c) and the exemption specified in that Section will cover that liability even though it partakes of the nature of rent. It makes no difference whether the rent in question be an ordinary contractual rent or that governed by the special provisions of the Madras Estates Land Act to bring it within the meaning of rent under the Act.[77]

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(75) *Thiruganavalli Ammal v. Venugopala Pillai*, 58 L.W. 89: (1945) 1 M.L.J. 20: 1945 M. W. N. 172: 1945 M. 125.

(76) *District Board of West Tanjore v. Ponnuswami Pallavarayar*, 50 L.W. 503: (1939) 2 M.L.J. 818: 1939 M.W.N. 972: 1940 M. 231: I.L.R. (1940) M. 239.

(77) *Venkata Bhagavathar v. L. F. Chatram, Tiruturaipundi*, 55 L.W. 203: (1942) 1 M.L.J. 416: 1942 M.W.N. 215: 1942 M. 462.

S. 4 (*d*).—Debts contracted on the security of house property alone are exempted. Even if the security comprises along with the house property in a Municipality an agricultural land or any other movable property, this clause would not apply. The debt must be one that should arise out of contract. If the debt arises by way of damages for wrongful withholding of monies, or operation of law, this clause would not apply.

House property.—House property includes the site on which the house stands, the garden, compound or yard attached thereto.[78] Vacant site, which is part of a compound of the house, though it bears a different paimash survey number from the compound, is not separate from the compound and is held to be house property.[78] But a vacant site which is not appurtenant to a house or necessary for its enjoyment, though it is suitable for building purposes and it is to be built upon, cannot be considered to be house property, until the building operations have at any rate started.

Where a mortgage covered two separate plots, one with a building and the other a vacant site with no building, it cannot be said to be a mortgage of house property only within the meaning of this clause.[79]

S. 4 (*d*).—Where a debt contracted, on the security of a municipal house property alone existing on 1-10-1937 and in respect of that a preliminary decree was passed before the Act came into force, that debt is excluded by the terms of S. 4 (*d*) from the operation of the Act and any additional security in the shape of agricultural lands after the Act came into force in respect of that decree amount, cannot retrospectively create a debt contracted on the security of property other than municipal property so as to bring into force Ss. 7 and 8 and exclude S. 4 (*d*).[80] The fact, that by reason of the personal covenant in a mortgage deed of house property alone in a municipality, the debt might be enforced against other property belonging to the judgment-debtor, cannot make it a debt not contracted on the security of house property alone in a municipality. If and when a personal decree is passed, it may be open to the judgment-debtor to contend that the liability under the personal decree is not one within the exception contained in S. 4 (*b*).[81] Where a mortgage comes under S. 4 (*d*), a subsequent pronote embodying the interest therein is not liable to be scaled down.[82] When a mortgagor has given as security for his debt some houses and other lands and not the buildings standing thereon which belonged to third parties, it cannot be said that he contracted the debt on the security of

(78) *Namasivaya Mudaliar* v. *Srinivasa Iyengar*, 50 L.W. 578: (1939) 2 M.L.J. 782: 1939 M.W.N. 1148: 1940 M. 54.

(79) *Ponnambalam Chetty* v. *Raman Chettiar*, 50 L.W. 181: (1939) 2 M.L.J. 233: 1939 M.W.N. 731: 1939 M. 789: I.L.R. (1939) M. 943.

(80) *Muthukaruppan Chettiar* v. *Subbiah Chettiar*, 54 L.W. 488: (1941) 2 M.L.J. 653: 1941 M.W.N. 991: 1942 M. 34.

(81) *Satyanarayana* v. *Veereswara Sastrulu*, A. No. 187/39, (1941) 2 M.L.J. (N.R.C.) 47.

(82) *Ramachandra* v. *Ramaswami*, 55 L.W. 609: (1942) 2 M.L.J. 420: 1942 M.W.N. 744: 1943 M. 53.

house property alone so as to exempt the debt from operation of the Act.[83] An oil engine in a house mortgaged and vacant site adjoining it and used for storing grain and surrounded by wall containing a shed falls under this sub-section.[84] House and garden attached to it must be considered as one item of property. The fact that there are a few trees in the compound surrounding the house or adjacent to it would not make it a different property and the compound would go with the house.[85]

In cannot be said that there is no debt contracted on the security of house property merely because a mortgage discharged a pre-existing simple money debt. Nor can it be said that the liability comprised in the personal covenant embodied in the mortgage is a separate debt not contracted on the security of house property.[86]

S. 4 (*c*).—This clause exempts debts due to Co-operative Societies, Land Mortgage Banks, which are the national credit organisations constituted for doing magnanimous and beneficent services towards promotion of thrift, self-help, self-reliance and mutual aid among agriculturists by providing benevolent credit system. In opposing an amendment to delete this clause the Premier states the reason as follows:—"The credit system of the Co-operative Societies is not less important than the functioning of the Government in regard to the agriculturist. Even on principle, apart from the actual practice and fact, Co-operative Societies, wherever they have been borrowing, have borrowed from among the members, from among a group of agriculturists and it would be impossible to treat the Co-operative Societies as an outside body. Apart from the legal principle, I submit that it would not only not help the agriculturists but would interfere with their loans. That is the reason why from the very outset the whole organisation of Co-operative Societies and Land Mortgage Banks were excluded from the operation of this measure." The amendment was lost.

S. 4 (*e*).—**Liability to Imperial Bank.**—Where there is no transfer *in presenti* of a debt or decree in its favour by Imperial Bank to a third person but a mere agreement to transfer in future the fruits of the decree, that debt is one falling within S. 4 (*e*) and cannot be scaled down.[87]

Corporation formed in pursuance of any special Indian Law.—The Reserve Bank of India and the Imperial Bank would be Corporations formed under special Indian Acts, the Reserve Bank Act and the Imperial Bank Act. A decree in favour of the subject Bank

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(83) *Jikkinibibi Saheba* v. *Ranganayaki Ammal* 55 L.W. 851: (1942) 2 M.L.J. 487: 1942 M. 278: 207 I.C. 207.

(84) *Suganatha Mudaliar* v. *Kuppuswami Chetti*, 60 L.W. 583: (1947) 2 M.L.J. 273: 1947 M.W.N. 542.

(85) A.A.A.O. 264/46: 61 L.W. (S.R.C.) 78. *Sethu Hunger* v. *Gurucappa*.

(86) *Satyavathamma* v. *Mallikarjunarao*, (C.R.P. 537/41) (1941) 1 M.L.J. (N.R.C.) 61.

(87) *Krishnamurthi* v. *Imperial Bank of India*, C.R.P. 1145/41, (1941) 2 M.L.J. (N.R.C.) 10.

cannot be scaled down.[88] A Society formed under the Societies Registration Act (XXI of 1860) falls within the meaning of this clause.[89]

S. 4 (*f*). This clause does not extend the protection of the Act to the liabilities arising out of a breach of trust, whether express or implied. It is an equitable principle that persons who are guilty of breach of trust should not escape from discharging their liabilities to the fullest extent. There are other obligations in the nature of trust which are specified in Chapter IX of the Indian Trusts Act II of 1882[90] and this clause covers such trusts as well.

In order to invoke the application of this clause, it must be satisfied that there exists a fiduciary relationship (*e.g.*) as that of a trustee, executor, partner,[91] agent,[92] guardian, or legal adviser. The breach of trust may be positive as in the cases of dishonest misappropriation or embezzlement of the trust property, or dishonest use or disposal of the trust property in violation of any law, or contract governing the discharge of trust or may be negative as in the cases of culpable negligence or wilful default of the trustee.

Co-owners.--In the case of co-owners like co-heirs of a Mohammadan, succeeding to his property, the liability of the managing co-owner to the rest is not a debt within the meaning of the Act and if he collects outstandings and income due to common estate and invests them for interest, he can be made liable, in a suit by his co-owners for the division of their shares to pay interest to them on their share of realisation by managing owner and this clause does apply to such a liability as it is covered by S. 90 of the Trusts Act and by virtue of S. 95 of that Act he incurs liability to pay interest under S. 23 of the Trusts Act.[93]

S. 4 (*f*): Executor's liability.—Where an executor did not pay a legacy but used the amount for his own purposes giving the legatee a memorandum for the amount so appropriated, the legatee's suit for the recovery of the amount set forth in the memorandum is clearly one to enforce liability protected under the section.[94]

"Arising out of breach of trust."—The words "Arising out of breach of Trust" should not be read so as to cover any liability which

(88) *Thammareddi* v. *Imperial Bank of India,* (C.R.P. 1379 38) (1940) 2 M.L.J. (N.R.C.) 51.

(89) *Rukminamma* v. *Venkataramdas,* 52 L.W. 549 (1) : (1940) 2 M.L.J. 554 : 1940 M.W.N. 1015 : 1940 M. 949.

(90) *Mottai Meera* v. *Abdul Khader,* 49 L.W. 391 : (1939) 1 M.L.J. 528 : 1939 M.W.N. 279 : 1939 M. 471 : I.L.R. (1939) M. 525.

(91) *Official Assignee of Madras* v. *Krishnaji,* 1930 M. 693: 31 L.W. 792 : 1930 M.W.N. 362 : 59 M.L.J. 788.

(92) *Official Assignee of Madras* v. *Krishnaji,* 1933 P.C. 148 (150) ; 37 L.W. 780 : 65 M.L.J. 1 : 1933 M.W.N. 575.

(93) *Mottai Meera* v. *Abdul Khader,* 49 L.W. 391 : (1939) 1 M.L.J. 528 : 1939 M.W.N. 279 : 1939 M. 471 : I.L.R. (1939) M. 525.

(94) *Venkataramireddi* v. *Satyanarayanareddi,* A.A.O. 138/39, (1941) 2 M.L.J. (N.R.C.) 48 (2).

is in any way connected with breach of trust. The object of the section is to prevent dishonest trustees from pleading the Act in order to retain the fruits of dishonesty. When a third party gives security for the due discharge by a person under fiduciary relationship of his duties, the surety incurs to the beneficiary a contractual liability which is enforceable only in case the trustee commits a breach of trust. Such a liability can be scaled down and is not one arising out of breach of trust.[95]

Son's pious obligation.—The liability of a son arising out of his pious obligation to discharge the father's debt originally arising out of breach of trust is not protected by S. 4 (*f*). and accordingly it can be scaled down.[96]

Depositee.—Where the proprietor of a Nattukottai Chetty family firm received in deposit the *stridhan* moneys of his daughter-in-law under an obligation to hold it for a particular purpose, the character of deposit is such as to make the position of the recipient of the deposit analogous to that of a trustee, and the grandson who succeeded to the firm cannot ask for scaling down of liability by reason of S. 4 (*f*).[97]

Chit Fund.—The liability of a subscriber who bids at a chit auction and takes the pool at a discount, executing a security bond or mortgage to guarantee the discharge of his obligation by the payment of his future instalments, is a liability to which the Act applies. There is no question of breach of trust if he commits default and this clause does not apply.[98]

Purchaser of a Hypotheca.—Where a purchaser of a hypotheca executed a pronote to the mortgagee for the balance due under the mortgage, and a suit was brought against him, even assuming this liability had its origin in a trust, there has been no breach of trust.[99]

S. 4 (g).—The object of this clause is that persons whose sole means of support is a paltry maintenance allowance are in need of a larger measure of protection than even an agriculturist. Maintenance is not defined and cannot be supposed to have any technical meaning. Where a payment is meant for maintenance of the decree-holder it will come under "maintenance".[1]

Assignment of debt in lieu of maintenance.—The mere fact that an asset of joint family by way of debt due to it was assigned to

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(95) *Lingareddi* v. *Subbaramareddi*, 54 L.W. 697: (1941) 2 M.L.J. 1008: 1941 M.W.N. 1042: 1942 M. 202.

(96) *Ramanadhan* v. *Achamma*, C.R.P. 2386/39, (1941) 2 M.L.J. (N.R.C.) A.A.O. No. 433, & 478/44, 59 L.W. (S.R.C.) 111.

(97) *Subramania Iyer* v. *Sirahami Achi*, 57 L.W. 34: (1944) 1 M.L.J. 38: 1947 M.W.N. 118: 1946 M. 256: 202 I.C. 117.

(98) *Chidambara* v. *Srinivasa*, (C.R.P. 2313/1939) (1941) 1 M.L.J. (N.R.C.) 12.

(99) *Doraikannu Odayar* v. *Veeraswami Padayachi*, 52 L.W. 582: (1940) 2 M.L.J. 651: 1940 M.W.N. 1042: 1941 M. 59.

(1) (A.A.O. 7/1940) (1940) 1 M.L.J. (N.R.C.) 34.

plaintiff in lieu of maintenance will not make the liability of the debtor a liability in respect of maintenance protected by S. 4 (*g*).[2]

Assignee.—The wording of this sub-section is wide enough to cover claims not only of persons entitled to be maintained but also assignees from them of their right to recover arrears of maintenance. So an assignee of arrears of maintenance bringing a suit for their recovery is entitled to protection.[3]

S. 4 (*h*).—The object of this clause is to exempt from the operation of the Act, debts due to a woman, who is entirely dependent on such debts. The essential ingredients are, (1) the debt must be due to the woman on 1-10-1937; (2) the woman should not own any other property on 1-10-1937; and (3) the principal of the debts due to her on 1-10-1937 should not exceed three thousand rupees.

Due to a woman on 1-10-1937.—The crucial date is 1-10-1937. The debt must be due to a woman on 1-10-1937.

ILLUSTRATION.

A debt was originally due to a man who died during the pendency of a suit thereon and his widow was impleaded as his legal representative and a decree was passed in her favour. On 1-12-1935 she transferred her decree to another *A*. The deed of transfer recited that the transferor will, if there be any obstruction at the time of the recovery of the decree debt, clear such obstruction at her own expense. The transfer was ultimately recognized by the Court on 6-2-1937 after which date transferee alone became entitled to execute the decree. After recognition of the transfer by Court so far as the judgment-debtor was concerned, the only person to whom the debt was payable was the transferee and the transferor ceased to have the right to recover anything from the judgment-debtor. S. 4 (*h*) does not apply to these circumstances.[4]

It is sufficient that the debt was due on 1-10-1937, though the time for payment of the same wholly or by any instalments had not yet arrived. The fact that a woman acquired a debt by assignment before the Act came into force is irrelevant and she is exempt from the operation of the scaling down provisions.[5] Where a widow succeeded by operation of law to a debt of her deceased husband, it was nevertheless a debt due to her and that it was not liable to be scaled down and further the widow's estate in such a debt with its restriction is not taken out of the operation of S. 4 (*h*). The debt need not be one advanced by a woman herself in order to claim exemption.[6]

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(2) *Subbaramayya* v. *Guramma*, 55 L.W. 118: (1942) 1 M.L.J. 290: 1942 M.W.N. 182 (1): 1942 M. 385: 210 I.C. 626.

(3) *Sudarsana Rao* v. *Dalayya*, 56 L.W. 238: (1943) 1 M.L.J. 339: 1943 M.W.N. 266: 1943 M. 487: 210 I.C. 626.

(4) *Dorayya* v. *Satyanarayana*, (C.R.P. 2225/39) (1941) 1 M.L.J. (N.R.C.) 74.

(5) *Visalakshi Ammal* v. *Pokker*, (C.R.P. 1470/39), (1940) 2 M.L.J. (N.R.C.) 57.

(6) (C.R.P. 107/39) 51 L.W. (S.R.C.) 26.

Principal amount of debt.—The argument that for the purpose of S. 4 (*h*) the principal of debt or debts means the principal of some antecedent debts is not sustainable.[7]

ILLUSTRATION.

Plaintiff a woman obtained decree for Rs. 14,500 plus Rs. 1,450 being costs of the suit in 1936. The judgment-debtor applied for scaling down the said debt. It is admitted that the original principal is only Rs. 2,000. The judgment-debtor contended that the word 'Principal' must be understood in the dictionary sense of the word and not in the sense of original principal borrowed as per the other provisions of the Act. But the principal does not mean original principal (notional principal) of some antecedent debt. The plaintiff is not entitled to claim exemption as the sum of Rs. 2,000 original principal borrowed plus cost of Rs. 1,450 awarded to her under the decree amount to more than Rs. 3,000 and therefore the decree is liable to be scaled down.[8]

Benamidar.—When it is urged against the plea of exemption that a woman is entitled to a mortgage bond which, when taken into consideration, would take her out of the pale of exemption, she met this contention by adducing evidence that she is not the owner of the bond but is only a benamidar for her adopted son. The question being purely one of ownership of proceeds of the mortgage debt to which the ordinary law applies, there is no reason why it should not be open to her to sustain her plea by adducing evidence that she is not beneficially interested in the mortgage though it stood in her name.[9]

Pronote for collection.—A pronote of 4-3-1935 (in renewal of prior notes) executed in favour of a woman was endorsed to plaintiff for collection only on 25-2-1938. The endorsement being for collection only, the debt is due to woman on 1-10-1937 and cannot be scaled down.[10]

S. 4 (h).—In regard to a debt which is sought to be scaled down under the Act, no benami can be pleaded, but when a question arises as to whether a woman claiming exemption under 4 (*h*) owns other property or not, it is permissible in the course of the investigation in regard to such property, to entertain and enquire into a plea of Benami, which may be raised in respect of its ownership.

Pronote for collection.—In an application under S. 19 to scale down a decree obtained on a pronote by its endorsee, it is not open to him to say that as he was a transferee for collection from his sister of

(7) *Timmayi Ammal* v. *Muthu Moopanar*. C.R.P. 1045/39, 54 L.W. (S.R.C.) 39: (1941) 2 M.L.J. (N.R.C.) 43: 1941 M.W.N. (N.R.C.) 92 (2).

(8) *Ananthamma* v. *Rama Rao*, C.M.A. 532 & 533/1938, 54 L.W. (S.R.C.) 50: (1941) 2 M.L.J. (N.R.C.) 50.

(9) *Rangaswami Pillai* v. *Vasavammal*, 55 L.W. 127: (1942) 1 M.L.J. 289: 1942 M.W.N. 139: 1942 M. 388.

(10) *Ramaswami* v. *Venkatareddi* (C.R.P. 1012/38) (1940) 2 M.L.J. (N.R.C.) 81.

the suit note, S. 4 (*h*) is attracted on the ground that a woman is the rea owner of the note.[11]

Other property.—The woman should not own other property or 1-10-1937. The "other property" includes land, whatever its value may be.[12] The object of the Act is to protect a woman who entirely depends upon debts due to her but not on other property. It is provided that in calculating the value of the property owned by a woman on 1-10-1937, the house in which she lived, or any furniture therein, or her household utensils, wearing apparel, jewellery, or such like personal belongings, should not be taken into account. The explanation suggests to exclude only that portion of the house in which the woman creditor lived (*i.e.*) the portion of the house which was actually occupied by her. If in one portion of the house she lives and derives rent from the other portion, the rent so derived would become other property and she will be deprived of the privilege of this clause Other property must be taken to refer to property other than a debt or debts due to a woman from an agriculturist. The debt due to her from a non-agriculturist would be other property. Besides the decree debt sought to be scaled down a woman was entitled to a half share in a mortgage debt due from another person but has no other property The principal amount of both these debts which were due on the 1st October, 1937, did not exceed Rs. 3,000. It was contended that as she owned another debt, *viz.*, half share in the mortgage debt, she must be deemed to have owned "other property", and that she is not entitled to the exemption. Negativing such a narrow construction Their Lordships observed as follows :—

"For example if a woman having no other property had two claims, each for a small sum, say Rs. 100 and an application was made to scale down one of the debts, the existence of the other debt would exclude her the benefit of the exemption, where if she had one claim for just under Rs. 3,000, the exemption would apply. Such a construction which leads to such startling and anomalous results cannot be accepted unless the language used by the legislature is so clear and unambiguous as to compel its acceptance. It is no doubt true that in the construction indicated by us above, there would be the anomaly that a woman owning jewellery or personal belongings worth a large sum could claim the benefit of the exemption for a debt of, say, Rs. 2,500 due to her, a woman having a claim for a smaller sum but owning one or two cents of land yielding of which may be next to nothing would be excluded from such benefit. This result is no doubt regrettable and was, perhaps, not intended but it is unavoidable on the present wording of the provision . . . . There is no reason for adopting the petitioner's contention which would render the exemption more illusory and the anomalies involved in its application more glaring

(11) *Jagannatha Rao* v. *Narasimha*, C.R.P. 1265/40, 55 L.W. (S.R.C.) 1 (1): (1942) 1 M.L.J. (N.R.C.) 28 (1).

(12) *Batcha Maistri* v. *Lakshmi Ammal*, (C.R.P. 2132/1939) (1941) 1 M.L. (N.R.C.) 77.

specially when there is nothing in the language employed to support such a construction."[13]

Cows : Other property.—Cows are other property. They cannot be regarded as *esjudem generis* with " Furniture " household utensils, etc. The possession by a woman of 4 cows is accordingly sufficient to exclude her from the exception.[14]

The undefined right of widow to maintenance out of property of joint family of her deceased husband cannot be deemed to be other property. While the right of widow to receive a fixed amount month to month is certainly property, it could not have been the intention of the Legislature to exclude a woman from the protection of this section merely because, apart from her income from the debts less than Rs. 3,000, she had the right to be fed and clothed out of the income of family properties.[15]

Maintenance.—Maintenance allowance decreed to a Hindu daughter is property within the meaning of this clause.[16]

Co-owners.—This clause applies to a debt due to two women jointly or as co-owners and in such a case the interest of each woman in the debt and her assets apart from the debt, determine whether such woman is entitled to claim exemption. Ordinarily speaking unless there is anything repugnant in the context, the singular includes the plural. " Any debt or debts due to a woman " would apply to a debt or debts due to two women. The Court must look to the amount of the debt due to that particular creditor, and the amount of debts due from agriculturists to that particular creditor.[17]

Benami.—Where an assignee (of mortgage) decree-holder is a woman exempted under S. 4 (*h*), a plea in execution proceedings that the assignment of the mortgage to the decree-holder is a benami transaction and that the real beneficial owners were men and S. 4 (*h*) does not apply is not open to the judgment-debtor, though it may be permissible in litigation between the alleged benamidar and beneficial owner.[18]

Where a decree was obtained by the holder of a pronote which at least since 1935 has stood in the name of men, it is not permissible for the decree-holder to adduce evidence that the debt is really owed to a woman in order to invoke S. 4 (*h*). The liability of the

(13) *Ramaswami Reddi* v. *Alagayammal*, 51 L.W. 444: (1940) 1 M.L.J. 534: 1940 M.W.N. 309: 1940 M. 421: I.L.R. 1940 M. 688. *Overruling* C.R.P. 1072/38; 49 L.W. (S.R.C.) 58 (Krishnaswami Ayyangar, J.).

(14) *Chenchamma* v. *Penchalu Naidu*, C.R.P. 790/40, 55 L.W. (S.R.C.) 5 (1) (*b*): (1942) I.M.L.J. (N.R.C.) 10 (*b*).

(15) *Perumal Chettiar* v. *Machammal*, A.A.O. 23 5/45, 59-L.W. (S.R.C.) 53 (2) (i).

(16) *Chinnabbi* v. *Venkata Subbamma*, (C.M.A. 500/38) 53 L.W. 75: (1941) 1 M.L.J. 123: 1941 M.W.N. 296.

(17) *Bhadrachellam* v. *Naga Rupavathamma*, 52 L.W. 292: (1940) 2 M.L.J. 342: 1940 M.W.N. 912: 1940 M. 885.

(18) *Ranganayakulu* v. *Raghavamma* (A.A.A.O. 141/39): (1940) 2 M.L.J. (N.R.C.) 53.

judgment-debtor is to the decree-holder and to no one else, though the decree-holder may himself be liable to pay the realisation to a woman.[19]

Assignee, a woman.—The view that plaintiff who is a woman is not entitled to claim exemption merely because her assignor a man is not entitled to such exemption is incorrect. Having taken the assignment, she became the owner of the debt. When she claims the benefit of the exemption it is no answer to say that the original payee is a man.[20] Where there is a debt due to a woman and a man and the amount of the debt due to each can be ascertained, if the woman is entitled to protection under S. 4 (*h*), to the extent of her interest in the debt the debtor should be refused relief, while he should be given relief to the extent of interest in the debt belonging to the man.[21]

Transfer or Renewal.—This sub-section does not say expressly what is to happen if the debt due to woman on 1–10–1937 is transferred or renewed or reduced by a payment in the interval between 1–10–1937 and the date when the matter comes before the Court. This clause must be read as exempting from the operation of the Act that class of liabilities of an agriculturist which are excluded in Cl. (*h*) regardless of whether after 1–10–1937, a fresh document is or not executed by the same debtor in respect of that debt.

ILLUSTRATION

When a pronote for Rs. 3,258 was executed in November 1937 in favour of a woman in renewal of earlier note of 1934 in her favour for Rs. 2,534 which was itself in renewal of a still earlier pronote of 1931 for Rs. 1,983 and she filed a suit in 1937 note and it was found that she owned no other property, S. 4 (*h*) applies in spite of the renewal.[22]

Change in Law.—For the words " who on that date did not own any other property, provided the principal amount of the debt or debts did not exceed Rs. 3,000," the words " provided that the value of the property owned by her on that date, including the principal of the amount of debt or debts so due, did not exceed Rs. 6,000" are substituted by the Amending Act XXIII of 1948. Prior to this change, women creditors to whom small amounts are due and who own some small additional property do not get the benefit of the protection, whereas women creditors to whom much larger amounts are due and who do not own any other property used to get the protection. In order to remove this anomaly, this change is effected. Thus women who on the

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(19) *Subbareddi* v. *Venkatappa Reddi*, 53 L.W. 245 : (1941) 1 M.L.J. 313 : 1941 M.W.N. 203.

(20) *Muthu Achi* v. *Doraiswami Pillai* 55 (L.W.) 457 (1) : (1942) 2 M.L.J. 123 : 1942 M.W.N. 432 : 1942 M. 6?2 (2).

(21) *Gangadharudu* v. *Mahalakshmamma* 58 L.W. 141 : (1945) 1 M.L.J. 468 : 1945 M.W.N. 212 : 1945 M. 260.

(22) *Parameswaramma* v. *Kotayya* 56 L.W. 493 : (1943) 2 M.L.J. 276 : (1943) M.W.N. 610 : 1943 M. 686 : 210 I. C. 273.

relevant dates owned property not exceeding Rs. 6,000 including their debts are now entitled to claim the exemption.

Debts due to orphans, aged and disabled persons.—In opposing an amendment which was proposed to include within the scope of this exemption debts to minors, orphans, very aged and disabled persons, the Premier said that women for whose benefit this clause is devised belong to a distinct class. Numerous difficulties would arise in defining them or ascertaining their fitness for relief. It would lead to enquiries whether a person was infirm or not and whether he was capable or not of earning a livelihood, and in the case of minors, the time that minority should be calculated up to—whether the date of inception of the debt or of the legislation. In the case of a woman, with regard to property it has been to a large extent a matter of tradition to extend the same difference with regard to tenure, with respect to life-estate and various other matters. In the case of others it would lead to several difficulties. As for orphans, what is the criterion? It is difficult to fix any. It would be difficult to define a disabled person. Regarding minors, there was another difficulty. If they proceeded to differentiate in regard to legal rights of minors, any amount of complication with regard to the rights of individual members of Hindu families would arise. Such difficulties would not arise in the case of women. The amendment was lost.

S. 4 (i).—The wages refer to the earnings of labourers and artisans. The wages under this clause are exempted from the operation of the Act, as they rarely carry interest. A labourer is one who labours in a toilsome occupation. Rural labourer includes a village labourer employed for any purpose, though not agricultural.

Special provision for undivided Hindu families, etc.

5. Where an undivided Hindu family other than a Marumakkattayam or Aliyasantana Tarwad or Tavazhi is assessed to the taxes specified in provisos (A), (B) and (C) to S. 3 (ii), or falls within the category of persons specified in proviso (D) to the same section, no person who was a member of the family on the 1st October, 1937, shall be deemed to be an agriculturist for the purposes of this Act except S. 13.

NOTES

With reference to this clause the Select Committee observes: "This clause contains a special provision for undivided Hindu families which are assessed to any of the taxes which disqualify such family from being treated as an agriculturist. As originally introduced, the Bill applied to Marumakkattayam and Aliyasantana Tarwads and Tavazhis. In view of the impossibility of obtaining individual partitions in such families, the latter have now been excluded from this

clause ". "A corresponding exclusion has also been effected in S. 6 which relates to the case of descendants of non-agriculturist members of undivided Hindu families which are agriculturists ". (*Vide* Report of Select Committee).

The definition of "person" in S. 3 (*i*) includes an undivided Hindu family and it logically follows that if such a family is non-agriculturist, no individual member who is part of that "person" can be regarded as an agriculturist for scaling down his share of the family debt, even though such a member when individually considered, is an agriculturist within S. 3 (*ii*). This will be with regard to such persons only who were members of the family on 1-10-1937.

Sons and descendants of non-agriculturist members of Hindu families to be non-agriculturist.

6. Where in an undivided Hindu family other than a Marumakkattayam or Aliyasantana Tarwad or Tavazhi which is an "agriculturist" within the meaning of S. 3 (ii), any member of the family is not an agriculturist, then, notwithstanding anything contained in S. 3 (ii), none of his sons and descendants in the male line shall be deemed to be an agriculturist for the purposes of Ss. 7 to 12 and 19 to 27 of this Act.

NOTES

This section deals with rights of non-agriculturist individual members of an undivided Hindu family which is an agriculturist. In opposing an amendment proposing to extend the benefits of the Act to the son or descendant of a non-agriculturist becoming an agriculturist on his own responsibility, the Premier observed: "Clause 6 deals only with undivided Hindu families. The only provision that it makes is this: that in applying the provisions of scaling down to undivided members, questions would arise whether when one is a professional who is excluded from the operation of the Bill, another member of the family who is not a professional but is an agriculturist, should be included—such questions would have to be solved. In dealing with such questions, children are made to take the status of their fathers in an undivided Hindu family consisting of many brothers, each one of whom has children. When the father who is an income-tax payer is excluded from the benefits of the Bill, his sons cannot claim any benefit. As regards reference to the benefits of the Bill, the benefits of the Bill cease with his status as on 1-10-1937. It is not intended that for all time the debts should be scaled in this manner." The disability is extended to his branch of descendants both in respect of family and of his separate debts, because under the Hindu Law his sons, grandsons and great-grandsons are liable to discharge his debts under the theory of pious obligation.

Where the father in a joint family is assessed to income-tax in his individual capacity and not as manager, the undivided sons would be able to claim relief under the Act. S. 6 contemplates the existence of a larger agriculturist unit consisting of a unit of several branches, one branch of which is headed by the father who is disqualified from being an agriculturist in which case his sons would be equally disqualified so long as they were joint and does not apply where there is no larger unit but the family consisting of father and son.[23] A person whose estate has vested in the Official Receiver in insolvency cannot so long as that vesting continues, be deemed to have saleable interest in the estate. An undischarged insolvent therefore lacks the basic qualification for the status of an agriculturist under the Act. Where there was at the commencement of the Act an agriculturist family consisting of two branches, the head of one branch being a non-agriculturist by reason of insolvency, and the head of another branch being an agriculturist, the sons of agriculturist brother will be deemed to be agriculturists, while the sons of non-agriculturist brother would be deemed to be non-agriculturist.[24]

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(23) *Sundaram* v. *Subba Rao*, 55 L. W. (160): (1942) 1 M. L. J. 327: 1942 M. W. N. 191: 1942 M. 402: 205 I. C. 364. *Indiradevi* v. *Audinarayanamurti*, 55 L. W. 636: (1942) 2 M. L. J. 486: 1942 M. W. N. 752: I.L.R. 1943 M. 294: 204 I. C. 560. *Suryanarayanamurti* v. *Viraju* 58 L. W. 150: (1945) 1 M. L. J. 292: 1945 M. W. N. 206: 1954 M. 257: I. L. R. 1946 M. 54.

(24) *Zamindar of Challapalli* v. *Venkatram* (1944) 2 M. L. J. 112; 1944 M. 497: 1944 M. W. N. 503.

CHAPTER II

Scaling down of debts and future rate of interest

Introductory.—This Chapter deals with the scaling down of debts of an agriculturist incurred before the commencement of the Act, and future rate of interest as well as costs. The debts are classified into two categories, first, those incurred before 1-10-1932, and secondly, those that were incurred after 1-10-1932, the crucial date of 1-10-1932 being fixed to differentiate debts relating to pre-depression period and post-depression period. In the case of the first category of debts, a modified form of Damdupat is applied under S. 8. If a debtor has paid twice the amount borrowed, his debt is deemed to be discharged. If less than twice is paid, the payment of outstanding principal discharges the debt, and all interest outstanding on 1-10-1937 is wiped out. In the case of latter category of debts which are treated on different footing under S. 9, the principal or such portion thereof as may be outstanding is not affected and will have to be repaid. Lower rate of interest, *i.e.*, at 5 per cent. per annum is to be charged on them. Under S. 12, subsequent interest subject to 6¼ per cent. is allowed on the balance of a debt outstanding. No debt incurred by an agriculturist after 22-3-1938 will bear interest at a rate higher than 6¼ per cent. per annum.

Debts payable by agriculturists to be scaled down.

7. Notwithstanding any law, custom, contract or decree of Court to the contrary, all debts payable by an agriculturist at the commencement of this Act, shall be scaled down in accordance with the provisions of this chapter.

No sum in excess of the amount as so scaled down shall be recoverable from him or from any land or interest in land belonging to him; nor shall his property be liable to be attached and sold or proceeded against in any manner in the execution of any decree against him in so far as such decree is for an amount in excess of the sum as scaled down under this Chapter.

NOTES

This section is a mandatory provision for scaling down the debts. It is not in the discretion of creditor or Court to scale down the debt but it is an imperative duty cast on the shoulders of the creditor and the Court as well, if the facts are brought to its notice.

Injunction suits.—It is in the first instance the duty of the creditor to scale down the debt. There is nothing in the section indicating that the scaling down must necessarily by the act of Court. It will be only in a case in which the creditor does not scale down his claim in accordance with the provisions of the Act, that intervention of Court will be necessary. If a creditor attempts to exercise his power of selling the debtor's property mortgaged to him, without scaling down the debt, that would be an act of injury which the Court would prevent by issuing a temporary injunction on application by the debtor.[1] In such a case when the creditor is about to exercise his power of sale under S. 69 of the Transfer of Property Act without the intervention of the Court, it is no answer to say that under S. 69 of the Transfer of Property Act, the debtor will be entitled to recover damages if the mortgagee exercised his power of sale in an improper and irregular manner,[2] as the section is mandatory in its terms.

Civil Courts, Village Courts and Panchayats.—By the Government notification No. 425, *Fort St. George Gazette*, Madras, dated 10-5-1938, all Civil Courts in the Province of Madras, Village Courts or Panchayat Courts established or constituted under the Madras Village Courts Act (I of 1889) are empowered to scale down the debt.

Debt Conciliation Boards.—The Debt Conciliation Board has no power to apply the provisions of the Act to the applications before it under S. 4 (1) of the Madras Debt Conciliation Act (XI of 1936).[3]

Payable.—The scaling down is only in respect of debts payable at the commencement of the Act. "Payable" includes debts that would become due on a future date.[4] A sum of money is said to be payable when a person is under an obligation to pay it. The term "payable" is used in preference to the word "recoverable" which appeared in the original draft Bill as the latter word may imply the question of solvency of the debtor.

Decrees before Act.—The word "decree" in Ss. 7, 8 and 9 refers to decrees passed before the commencement of the Act. These provisions are not free from ambiguity and may, at first blush, appear to lend some countenance to the contention that the non-obstante clause in S. 7, and the words "whether the debt or other obligation has ripened into a decree or not" in S. 8, indicate that the debts incurred before the Act should be scaled down, irrespective of any decree passed in respect of them, whether such decrees were passed before or after the commencement of the Act. But on a closer examination of these sections in the light of other provisions of the Act and the scheme revealed thereby, it is fairly clear that the reference to

(1) *Govindaswami Naicker* v. *Jeewanmul Sowcar*, 48 L.W. 531: (1938) 2 M.L.J. 920: 1938 M.W.N. 949: 1939 M. 56: I.L.R. 1939 M. 296: 183 I.C. 418.

(2) *Govindaswami Naicker* v. *Jeevanmul Sowcar*, (1938) 2 M.L.J. 918: 1939 M. 4: 182 I.C. 672.

(3) *Ramaswami Chetti* v. *Ramachandrarao*, 50 L.W. 813: (1939) 2 M.L.J. 789: 1939 M.W.N. 1196.

(4) *Bancharam* v. *Adayanadh*, 36 Cal. 936.

decrees is intended only to extend the benefit of scaling down to debts which had ripened into decrees before the Act came into force. "The provisions appear to envisage the state of things on 1-10-1937 and the reference to contracts obviously relates to contracts before that date. It is therefore reasonable to assume that the word "decree" which occurs in the same context is also used subject to the same qualification. It is significant that the meaning provided in Ss. 19 and 20 for "amendment" by scaling down in accordance with the Act and for stay of execution pending proceedings for such amendment, are made applicable only to decrees passed before the Act, and there are no similar provisions in respect of decrees passed after the Act. Similarly S. 18 provides for amendment of decrees before Act in suits instituted after 1-10-1937 by a proportionate reduction of costs also."[5]

Amendment after judgment and before decree.—When a suit is dismissed by the trial Court on ground of limitation and is allowed on appeal, application to scale down is maintainable after judgment and before the decree. "There was no necessity for them (judgment-debtors) to make an application for scaling down the debt until the judgment was pronounced allowing plaintiff's claim. It is only after the judgment was pronounced in appeal, that any necessity could arise for making an application to scale down the debt or move the Court even orally to consider the question of scaling down the debt under provisions of Ss. 7 and 8 of the Act before a decree was made. It is not reasonable to expect a party to put an application which might never be necessary and it cannot be said that the omission to make an application before the judgment was pronounced debars the petitioner from making this application as early as possible after the judgment was pronounced and before a decree is actually drawn up. The law as laid down in Ss. 7 and 8 requires debts to be scaled down in a particular manner and if for some reason or other there is no need for anybody to apply for scaling down the debt as in this case, the judgment was pronounced in appeal, it could not be known that the debt was one which was enforceable in law and it would be going against the spirit of the Act which is undoubtedly to give relief to debtors to dismiss applications for relief which the Legislature meant to give to debtors on such a purely technical ground as the fact that there is no particular provision made in the Act for making application for scaling down under Ss. 7 and 8 of the Act."[6]

Decree wherein satisfaction is entered.—Where during the pendency of an appeal from a mortgage decree, hypotheca was sold and satisfaction was entered, there is no existing debt to be scaled down in accordance with Ss. 7 and 8 when appeal is heard,[7] when

(5) *Kotayya* v. *Punnayya*, 52 L.W. 176 : (1940) 2 M.L.J. 202 : 1940 M.W.N. 809 : 1940 M. 910 : I.L.R. 1940 M. 1023.

(6) *Somasundaram* v. *Peria Karuppan*, 51 L.W. 606 : 1940 M.W.N. 412 : 1940 M. 478.

(7) (S.A. 319/35). 49 L.W. (S.R.C.) 11.

the judgment-debtor has deposited under O. 21, rule 89 of the Code of Civil Procedure the amount necessary to have the sale set aside and this amount having been withdrawn by the decree-holder in full satisfaction there no longer remains a debt to found an application for scaling down.[8]

Agriculturist and non-agriculturist debtor.—The right of an agriculturist judgment-debtor to scale down a decree should not be allowed to enure to the benefit of a non-agriculturist judgment-debtor. But a debt which is payable by the agriculturist does not fall outside the purview of the Act, merely because it is also payable by a non-agriculturist.[9]

Notice to non-agriculturist.—Although the section does not expressly require notice to a non-agriculturist judgment-debtor it is obviously desirable in case where the result of application for scaling down may be to increase the burden of another judgment-debtor.[10]

No sum in excess of the amount so scaled down shall be recoverable.—This only applies to recovery of the full amount without getting it scaled down by coercive process leaving untouched the freedom of parties to enter into transactions militating against the Act.

S. 7.—The only way in which a debtor may get back money which he has paid after the Act in excess of the amount properly due under the provisions of Act, would be by establishing a right to refund under ordinary law on the ground, that payments were made under mistake. For this purpose, there must be a definite plea of set off supported by evidence showing that a mistake was in fact made.[11]

Restitution.—The appellant held a decree of April 1934 for a sum of Rs. 615 and odd and costs amounting to Rs. 111 and odd. On 30-8-1941 he received by way of rateable distribution out of proceeds of sale of his judgment-debtor's property in execution of another decree, a sum of Rs. 788-13-0. In June 1941, an application to scale down the appellant's decree had been filed. In October the application was allowed and the decree scaled down to Rs. 344, etc., and costs as originally awarded. The judgment-debtor applied for the restitution of the sum recovered by the appellant in excess of the amount of the decree as scaled down. As at the time the appellant recovered Rs. 788 by process of the Court Act had come into force, no more than the amount to which the decree was eventually scaled

(8) *Thiravia Nadar* v. *Chella Nadar*, 52 L.W. 836: (1940) 2 M.L.J. 417: 1940 M.W.N. 911; 1941 M. 74 (2).

(9) *Ramier* v. *Srinivasiah*, 52 L.W. 842: (1940) 2 M.L.J. 872: 1940 M.W.N. 1218: 1941 M. 204; *Kumaraswami Reddiar* v. *Muthu Gopalaswami Naicker*, 52 L.W. 836: (1940) 2 M.L.J. 943: 1940 M.W.N. 1257: 1941 M. 205.

(10) *Kumaraswami Reddiar* v. *Muthu Gopalaswami Naicker*, 52 L.W. 836: (1940) 2 M.L.J. 943: 1940 M.W.N. 1257: 1941 M. 205.

(11) *Arunagiri Chettiar* v. *Kuppuswami Chettiar*, 55 L.W. 527: (1942) 2 M.L.J. 275: 1942 M.W.N. 541: 1942 M. 655.

down was recoverable from the debtor under S. 7 which indeed laid a duty on creditors to scale down their debts in accordance with the provisions of Act provided the debts are due from agriculturists. The creditor, having notice of application for scaling down, which was then pending disposal, the recovery of more than what was ascertained was clearly wrongful, the debtor is entitled to restitution, S. 144 of C. P. C. applies provided the decree is varied or reversed, however the variance or reversal is effected, and courts have inherent power to order restitution under Ss. 144 and 151 of C. P. C.[12]

Sale prior to scaling down.—A sale held in execution of a decree which had been subsequently scaled down is not invalid as offending against S. 7, where it cannot be shown that the decree had been scaled down prior to the sale, there would have been no need to sell the property.[13]

As can be seen from S. 8 (4) and S. 9 (2) there is no bar to the debtor paying voluntarily the full amount of principal and interest as per the terms of the contract, any sum in excess of the amount arrived at by the process of scaling down. No refund of the amounts so paid can be insisted on.

Provision for debts incurred before 1st October, 1932.

8. Debts incurred before the 1st October, 1932, shall be scaled down in the manner mentioned hereunder, namely :—

(1) All interest outstanding on the 1st October, 1937, in favour of any creditor of an agriculturist whether the same be payable under law, custom or contract or under a decree of Court and whether the debt or other obligation has ripened into a decree or not, shall be deemed to be discharged, and only the principal or such portion thereof as may be outstanding shall be deemed to be the amount repayable by the agriculturist on that date.

(2) Where an agriculturist has paid to any creditor twice the amount of the principal, whether by way of principal or interest or both, such debt including the principal, shall be deemed to be wholly discharged.

(3) Where the sums repaid by way of principal or interest or both fall short of twice the amount of the principal, such amount only as would make up this

(12) *Ankanna* v. *Basava Punnayya* (1945) M.L.J. 386 : (1945) M.W.N. 316 : 1945 M: 360.

(13) *Kumaraswamy* v. *Mahalakshmamma* 61 L.W. 576.

shortage, or the principal amount or such portion of the principal amount as is outstanding, whichever is smaller, shall be repayable.

(4) Subject to the provisions of Ss. 22 to 25, nothing contained in sub-Ss. (1), (2) and (3) shall be deemed to require the creditor to refund any sum which has been paid to him, or to increase the liability of a debtor to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed.

Amended by S. 4 of Act. XXIII 1948.

Explanation I.—In determining the amount repayable by a debtor under this section, every payment made by him shall be credited towards the principal, unless he has expressly stated in writing that such payment shall be in reduction of interest.

Explanation II.—Where the principal was borrowed in cash with an agreement to repay it in kind, the debtor shall, notwithstanding such agreement, be entitled to repay the debt in cash, after deducting the value of all payments made by him in kind, at the rate, if any, stipulated in such agreement, or if there is no such stipulation, at the market rate prevailing at the time of each payment.

Explanation III.—Where a debt has been renewed or included in a fresh document executed before or after the commencement of this Act, whether by the same or a different debtor and whether in favour of the same or a different creditor, the principal originally advanced together with such sums, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable under this section.

NOTES

This section lays down the method of scaling down the debts incurred before 1-10-1932 which fixes a distinctive landmark between debts incurred during pre-depression period and those incurred after depression set in. The latter are dealt with in S. 9.

Incurred.—The debt must be one incurred by an agriculturist. The *incurring* of the liability and the commencement of debt will be only from the date of payment of the amount to the debtor or to any other person on his behalf though the document covering the debt may be executed afterwards.

"Incur" is defined to mean "become liable" or "subject to" (*Webster's Dictionary*), to have liabilities cast upon one by act of parties or operation of law (*Bouvier*). Incur means to become subject to or liable for by act or operation of law. The word "incur" means "brought on." "The word incur is an inappropriate one in connection with the word 'obligation' if the latter word is limited to a case of contract. Men contract debts. They incur liabilities. In one case they act affirmatively. In the other, liability is incurred or cast upon them by act or operation of law" (*Law Lexicon* of M.L.J. Office).

Date of Liability.—The liability must be one incurred before 1-10-1932 in order to invoke the application of S. 8.

ILLUSTRATIONS

(1) **Purchaser of Hypotheca.**—*A* purchased a portion of mortgaged property in 1933. The mortgage was one of 1929 (*i.e.*) prior to 1-10-1932. The purchaser's liability was traceable to the original mortgage and his purchase was not the basis of a new liability. His liability has to be scaled down under S. 8.[14]

(2) **Chit Fund.**—In respect of a mortgage executed before 1-10-1932, as security for future instalments of a chit fund, by the mortgager who had taken the amount of the chit in auction, default in payment of instalment was committed after 1-10-1932. As the essence of the transaction is that he borrowed from the pool an amount representing the future instalments, it is a present liability created on the date of the mortgage, even though it is to be discharged by future instalments.[15]

(3) **Mesne Profits.**—A suit instituted for partition in 1922 was dismissed by the trial Court but the High Court in appeal decreed it in 1933 and held that the plaintiff was entitled to mesne profits for three years prior to the suit. The lower Court ascertained the mesne profits in 1935 and that was affirmed by the High Court on 1-3-1939. Though the extent defendant's liability was actually ascertained in 1935, still, the liability was there and hence it was a debt liable to be scaled down under S. 8.[16]

Endorsed Note.—(4) When a pronote of 1924 was endorsed by the payee in 1933 to the plaintiff, the debt so far as the endorser is concerned must be held to have been incurred after 1-10-1932, relating as it does to the date of endorsement and hence falls under S. 9. The date so far as the maker is concerned falls under S. 8.[17]

(14) *Perianna Gounden* v. *Sellappa Gounden*, 48 L.W. 954 : (1938) 2 M.L.J. 1068 : 1939 M.W.N. 106 : 1939 M. 186 : I.L.R. 1939 M. 218.

(15) *Kannan Nambiar* v. *Subramanya Pattar*, 52 L.W. 857 : (1940) 2 M.L.J. 927 : 1940 M.W.N. 76 : 1941 M. 231 ; *Periam Nadar* v. *Sivaswami Ayyar*, (C.R.P. 1483/1939), 52 L.W. (S.R.C.) 11 : (1940) 2 M.L.J. (N.R.C.) 23.

(16) *Eswarappa* v. *Hanumantharaya*, (C.M.P. 5059/39 in A.S. 109/36), 53 L.W. (S.R.C.) 11 : (1941) 1 M.L.J. (N.R.C.) 8.

(17) *Poovanalingam* v. *Nagarathnam*, 52 L.W. 518 : (1940) 2 M.L.J. 575 : 1940 M.W.N. 1128 : 1941 M. 52.

Whether the debt or other obligation has ripened into a decree or not.—The definition of debt in S. 3 (*iii*) includes a decree debt even. "The provision of S. 7 (2) seems to contemplate the scaling down of the original debt notwithstanding a decree and it is difficult to give any meaning or purpose to this clause if the process of scaling down is to start with a decree . . . . It seems to us impossible to give any effect to the words "Whether the debt had ripened into a decree or not" if the debt contemplated in the initial words of the section is decree itself. On the other hand, the first clause of S. 8 seems quite clearly to contemplate the debt incurred before 1-10-1932, as the original debt which ultimately ripened into a decree and consequently it must be the date of original debt that is the governing factor and not the date of the decree. The inclusion of decree in definition of debt S. 3 (*iii*) of the Act is quite consistent with this view." So a decree of 21-8-1936 obtained on the basis of a pronote of 1928 which was in renewal of a prior note of 1925, is liable to be scaled down under S. 8.[18]

The extent of liability.—In the case of a purchaser of a portion of mortgaged property seeking relief under the Act, the relief is not limited to the extent of proportion attributable to the property in his possession. The relief is not confined to the applicant. The applicant has to move the Court and bring certain facts to its notice and the quantum of relief is indicated by S. 8.[19]

Interest outstanding on 1-10-1937 and meaning of interest.—All interest outstanding on 1-10-1937 is wiped out. The "interest" includes compensation for wrongful withholding of money.

ILLUSTRATIONS

(1) Where *A* sold some trees to *B* on 29-9-1931 for Rs. 400, but before the latter could cut and carry them away, a third person *C* successfully asserted a paramount claim to them and obtained an injunction after 1-10-1932 to prevent *B* from cutting and carrying away with the result that the sale to *B* failed to take effect, the sale failed *ab initio* and the liability to refund the purchase-money arose on 29-9-1931 when the purchase-money was received by him and the claim is governed by S. 8. Whatever be the nature of liability to pay the principal sum, whether it is in contract or tort, the compensation awarded for wrongful withholding of its payment can properly be regarded as interest liable to be scaled down.[20]

(18) *Ramaseshayya* v. *Kutumbarao*, 52 L.W. 173: (1940) 2 M.L.J. 235: 1940 M.W.N. 770: 1940 M. 793: I.L.R. 1940 M. 943, upholding the decision of *Horwill, J.*, in *Narayanaswami Naidu* v. *Raja Manickam Pillai*, 51 L.W. 237: (1940) 1 M.L.J. 225: 1940 M.W.N. 265: 1940 M. 419, and dissenting from the opinion of *Venkataramana Rao, J.*, that decrees after 1-10-1932 may come under S. 9 [vide *Srinivasachariar* v. *Krishnayya Chetti*, 52 L.W. 295: (1940) 1 M.L.J. 860: 1940 M.W.N. 329: 1940 M. 485].

(19) *Perianna Gounden* v. *Sellappa Gounden*, 48 L.W. 954: (1938) 2 M.L.J. 1068: 1939 M.W.N. 106: 1939 M. 186: I.L.R. 1939 M. 218.

(20) *Paravan* v. *Gopala Nair*, 52 L.W. 289: (1940) 2 M.L.J. 273: 1940 M.W.N. 884: 1940 M. 794: I.L.R. 1940 M. 864.

S. 8. Outstanding Interest.—(2) In a suit on mortgage under which interest was payable on 10th March every year, it was contended that interest from 10-3-1937 to 1-10-1937 was wiped out as interest on 1-10-1937. The mortgagee contended that interest was not outstanding as it was payable only on 10th March every year. Although a date was fixed for payment of interest, interest must be deemed to have accrued from day to day according to the ordinary rule. The word "Outstanding" means unpaid, and the interest up to 1-10-1937 had certainly accrued due and was outstanding though not payable till 10-3-1938. Accordingly, the interest for the period is liable to be cancelled.[21]

(3) Where in respect of deposits with a money-lending firm, there were periodical settlement of account by and under which the accrued interest was added to outstanding principal and made to carry interest at the stipulated date for the next period, the interest accrued due and capitalised as aforesaid should not be deemed to have been paid but should be considered as outstanding so as liable to be scaled down and the fact that in a prior execution petition to enforce the decree obtained on the footing that capitalised interest also formed a part of the outstanding principal no question of relief under the Act in respect of such interest was put forward by way of objection is no ground for holding that such relief cannot be asked for or granted in a subsequent proceeding under S. 19.[22] This has overruled the further decision.[23]

Scaling down.—Suit pronote could be traced back to earlier note of 2-1-1927 for Rs. 2,100 executed by representative of defendant to plaintiff's assignor. The note of 1927 was made up of four other notes regarding which materials were not very complete. But one of these notes was for Rs. 700, dated 1-2-1917, which itself could be traced back to a still earlier note of 6-8-1916 for Rs. 250 between the same parties so that Rs. 450 out of Rs. 700 represented interest. Except for the amount of Rs. 450 representing interest included in principal of note of 1917, the balance of consideration for Rs. 2,100 for the note of 1927 must be deemed to be the original principal of suit transaction. The proper way of scaling down is to treat as original principal amount of Rs. 2,100 less Rs. 450, that is Rs. 1,650 and award interest at 6¼% from 1-10-1937 on that sum.[24]

Interest included in a decree for mesne profits.—Though interest is an integral part of the definition of mesne profits as given in S. 2 (2) of C.P.C., where there is a decree for mesne profits, court is not

(21) *Narayan Bhat* v. *Rama*, 55 L.W. 201: (1942) M.L.J. 453: 1942 M.W.N. 235: 1942 M. 551.

(22) *Ramaswamy Chettiar* v. *Ramaswamy Chettiar* 58 L.W. 193: (1945) 1 M.L.J. 391: 1945 M.W.N. 268: 1945 M. 342: I.L.R. 1945 M. 742.

(23) *Pazhaniappa Mudaliar* v. *Narayana Ayyar*, 55 L.W. 805: (1942) 2 M.L.J. 752: 1942 M.W.N. 737: 1943 M. 157: 207 I.C. 413: *Narayana* v. *Raghuthu*, S.A. 453/45, 59 L.W. (S.R.C.) 50 (1).

(24) *Nalamuni* v. *Dakshayani Amma*, (1942) 1 M.L.J. 418: 1942 M.W.N. 274: 1942 M. 456.

precluded from dealing with interest separately and holding that it should be deemed to be discharged under S. 8 (1) and therefore irrecoverable.[25]

Appropriations.—The word "outstanding" connotes the idea of the interest remaining due. It leaves in tact the appropriations (of payments) already made before 1-10-1937. The general law of appropriation which includes several kinds of notional appropriations is covered by Ss. 59 to 61 of the Indian Contract Act. Venkataramana Rao, J.,[26] set out the law of appropriation clearly in the following terms. "(1) It is the duty of the debtor to indicate when he makes a payment, what his intention is, namely, whether the amount paid should first be applied towards the principal, or interest and then the balance towards the principal. (2) If he omits to indicate his intention and there are no circumstances from which his intention can be inferred, he loses his right to have the amount appropriated in the manner he would like to have and the creditor has got the right to appropriate the amount in the manner best advantageous to him, he can either appropriate the amount towards interest in the first instance and balance towards the principal or entire amount towards principal. (3) But when there is no declaration by the creditor of his intention in what manner he appropriated and an appropriation is made, the law presumes that it has been made in the manner most advantageous to himself. In *Venkatadri Apparao* v. *Parthasarathy Apparao*,[27] their Lordships of the Judicial Committee at page 573 laid down the rule thus: "There is a debt due that carries interest. There are monies that are received without a definite appropriation on one side or the other and the rule which is well established in the ordinary cases is that in these circumstances the money is first applied in payment of interest and then when that is satisfied, in payment of the capital."

No question of difficulty arises in case of payments made specifically towards principal or interest before 1-10-1937. In the case of open payments only some difficulties would crop up when the methods of appropriation has to be considered. The subject of appropriation may be conveniently dealt with in regard to payments before 1-10-1937 and payments after 1-10-1937. Again in the case of the first category of payments, the question as to the time of appropriation (*i.e.*) whether the appropriation is made before 1-10-1937 or after 1-10-1937 is of paramount importance. These are analytically dealt with hereunder.

Theory of appropriation.—Mere payment of money towards debt is not appropriation nor is the passing of a receipt acknowledging such payment. There must be an overt act from which an appropriation can be reasonably deduced or inferred: where five sale deeds

(25) *Sudarsana Rao* v. *Appadu*, C.M.P. 1486/41 in S.A. 287/38; (1941) 2 M.L.J. (N.R.C.), 23.
(26) *Srinivasachariar* v. *Krishnayya Chetty*, 52 L.W. 295: (1940) 1 M.L.J. 860: 1940 M.W.N. 329: 1940 M. 485.
(27) I.L.R. 44 M. 570: 14 L.W. 25: 40 M.L.J. 549.

were executed towards discharge of 3 mortgage debts, amounts representing consideration of sale deeds are open payments.[28]

His Lordship King J. has held in difference between Hon. Wordsworth, J. and Hon. Patanjali Sastri, J., that when a payment was made and there was nothing to suggest that the debtor did not know the extent of his indebteedess or the amount of interest due or that he intended to pay interest and not principal, the amount paid, if it exceeds the amount due as interest, in excess of the interest then due, should to the extent of such excess, be treated as having been paid and appropriated towards principal.[29]

Explanation 1—Change in Law.—By the Amending Act XXIII of 1948 explanation 1 was newly added to set at rest the conflicting and doubtful ways of appropriation based on the theory of open payments. Now all payments made by an agriculturist towards a debt without expressly stating that such payments should go in reduction of interest, should be credited towards principal [29 A]. Thus the Case Law[30] relating to appropriation of open payments is now rendered nugatory and of no legal effect.

Payments before 1-10-1937 : Open payments.—In the case of open payments, *i.e.*, payments which were unappropriated, interest outstanding on 1-10-1937 is wiped out and these payments go in reduction of the principal.[31] "Granting that when the Court is adjusting the accounts between the debtor and the creditor, the ordinary rule is that unappropriated payments are first to be applied towards interest, this is more a rule for the guidance of Courts than a presumption of law regarding what has in fact been done. In dealing with the subject of appropriation as affecting S. 20 of the Indian Limitation Act, the Privy Council in a recent case [32] had occasion to consider whether, when there is an open payment towards a debt, a mere *notional appropriation*, such as is contemplated by the rule just referred to, can take the place of *actual appropriation* for the purpose of saving limitation and their Lordships held that it could not. It seems to us that the same principle would apply in dealing with the present facts (open payments)........We do not consider

(28) *Girija Ramsing* v. *Moopin Sankar*, S.A. 1591/45 = 61 L.W. (S.R.C.) 92.

(29) *Raghavareddiar* v. *Devarajulu Reddiar*, 55 L.W. 842 : (1942) 2 M.L.J. 724: 1942 M.W.N. 779 : 1943 M. 236 : I.L.R. 1943 M. 563 : 208 I.C. 69; *Padmaraju* v. *Raju*, C.R.P. 1293/45, 59 L.W. (S.R.C.) 56 (1) (3).

29 (A) *Sultan Badsha* v. *Celin Phillip*, C.S.A. 17/48, (1949) 1 M.L.J. (N.R.C.), 73.

(30) *Sinnachami Chettiar* v. *Paramaswami Chettiar*, 56 L.W. 579 : (1943) 2 M.L.J. 166 : 1943 M.W.N. 542 : 1943 M. 67 : 213 I.C. 353; *Lakshminarasimha* v. *Venkatanarasiah*, A.A.A.O. 117/44, (1945) 1 M.L.J. N.R.C. 7 (4), where it was held that an uncommunicated entry cannot be treated as binding appropriation; *Jivanya Rukminamma* v. *Guruvayya*, S.A. 857/48, 57 L.W. (S.R.C.) 54 (1) (2) *Pitchayya* v. *Venkatasurya Rao*, 57 L.W. 22 : (1944) 1 M.L.J. 52 : 1944 M.W.N. 119 : 1944 M. 243.

(31) (C.R.P. 1314/1939), 52 L.W. (S.R.C.) 20.

(32) *Ramashaha* v. *Lalchand*, 51 L.W. 578 : (1940) 1 M.L.J. 895 : 1940 M.W.N. 620 (P.C.) : 1940 P.C. 63 : I.L.R. 1940 L. 470.

that the creditor should be entitled after the debtor has sought relief under the Act to treat this payment as having been theoretically appropriated towards interest when in fact it was not appropriated at all. We must therefore regard the debt as one in which there has been a payment but that payment has not been appropriated either to the principal or interest."[33] Their Lordships doubted whether the theoretical appropriation propounded by Horwill, J.,[34] can be postulated in order to nullify the effect of S. 8 (1). Although there must have been an intention in due course to adjust the lump sum payment against the outstanding dues for principal and interest, until such adjustment has in fact been made, it cannot be said that there is no interest outstanding so as to bring into effect S. 8 (1).

ILLUSTRATIONS

(*a*) Where in respect of a pronote of 1935 which was in renewal of a pronote of 1926 for Rs. 1,000, a payment of Rs. 1,000 was made and endorsed on 2-8-1937 on the 1935 pronote as "*towards this pronote.*" The interest outstanding on 1-10-1937 was cancelled and the unappropriated payment of Rs. 1,000 discharges the debt of Rs. 1,000 in full.[35]

Appropriation before 1-10-1937.—Where at the time of the payment by a debtor there is an amount due towards interest and the creditor after appropriating it towards the total amount due to him (*i.e.*) interest and principal, claims the balance, he must be deemed to have appropriated the amount first towards interest and then principal.[36] Payments actually appropriated before 1-10-1937 will stand appropriated to principal or interest as the case may be, but payments not so appropriated shall be disregarded in calculating the amount of interest outstanding on 1-10-1937 and credited towards principal and the balance of the amount will be calculated according to the statutory provisions.[37]

Burden of proof in case of adjusted payments.—Where it is conceded that certain payments made by debtor had been adjusted by creditor towards the debt before 1-10-1937, they must have adjusted either in reduction of principal or interest. The question is not whether the creditor can positively prove an appropriation of payments towards interest but whether the debtor can show that the amounts had not been deducted from interest and if the debtor is not able to show that they have been adjusted in reduction of principal, he cannot

(33) *Doraiswamy Iyengar* v. *Raghavachariar*, 52 L.W. 580: (1940) 2 M.L.J. 648: 1940 M.W.N. 1053: 1941 M. 107.

(34) *Narayanaswami Naidu* v. *Raja Manickam Pillai*, 51 L.W. 237: (1940) 1 M.L.J. 225: 1940 M.W.N. 265: 1940 M. 419.

(35) *Doraiswami Iyengar* v. *Raghavachariar*, 52 L.W. 580: (1940) 2 M.L.J. 648. 1940 M.W.N. 1053: 1941 M. 107.

(36) *Srinivasachariar* v. *Krishnayya Chetti*, 52 L.W. 295: (1940) 1 M.L.J. 860: 1940 M.W.N. 329: 1940 M. 485.

(37) *Veeraraju* v. *Doragaru*, 52 L.W. 674: (1940) 2 M.L.J. 758: 1940 M.W.N. 1138: 1940 M. 940; *Anantharama Krishna* v. *Sundaram*, 52 L.W. 431 (1): (1940) 2 M.L.J. 550: 1940 M.W.N. 937.

show that on 1-10-1937 there was interest outstanding to the extent of the said payments.[38] A payment which has been definitely appropriated to a decree by recording part satisfaction cannot be regarded as an unappropriated payment.[39] Burden lies on the debtor to show that interest was outstanding on 1-10-1937, and unless he shows that the payment has not been appropriated towards interest, the appropriation cannot be re-opened.[40]

ILLUSTRATIONS

Decrees and part satisfaction.—(*a*) On 27-4-1925, a surety bond was executed for Rs. 7,250. There were certain payments and a suit was filed in 1928 for a sum of Rs. 11,500. It ended in a decree which was based on compromise and it provided for payment of Rs. 12,116 within 4 months or in default for payment of Rs. 14,116 with interest at 6 per cent. As no payment was made, the hypotheca was sold and realised Rs. 5,420 which was credited to the decree and part satisfaction was entered, and for balance a personal decree was passed. Thereafter two payments aggregating to Rs. 2,476 were made in 1932 and 1933. (1) The payments before suit had been adjusted to the debt and cannot be regarded as open payments. (2) Payment made as a result of sale after decree had been appropriated to interest due under the decree. (3) Later payments of 1932 and 1933 not having been shown to have been adjusted before 1-10-1937 cannot be regarded as having reduced the interest and were available to go in reduction of principal as on that date.[41]

(*b*) The decree arose out of a pronote of 26-7-1933 for Rs. 3,000. When the decree was passed, the amount due for principal and interest was Rs. 3,400 with Rs. 337 as costs. On 23-2-1937 the respondent in execution purchased the property of the judgment-debtor for Rs. 3,406 for which amount part satisfaction was entered on 17-7-1937 and a *pro tanto* discharge given. On 30-7-1937 a fresh execution petition was filed claiming Rs. 673 and odd as balance due under the decree. The payment could not be regarded as a payment to the debt generally kept in suspense and not appropriated and the payment being more than sufficient to cover all the interest on the debt, the judgment-debtor is not a position to show that there was on 1-10-1937 any interest outstanding. He will not be benefited by any re-appropriation from principal to costs under proviso to S. 19.[42]

(*c*) In a suit to enforce a mortgage in 1925 for Rs. 7,500, a decree was passed for the principal amount with interest exceeding

(38) *Venkateswara Ayyar* v. *Ramaswamier*, 53 L.W. 24 : (1941) 1 M.L.J. 9 : 1941 M.W.N. 326 : 1941 M. 403.

(39) *Srinivasachariar* v. *Krishnayya Chetty*, 53 L.W. 721 : 1941 M.W.N. 625.

(40) *Munirathnam* v. *Ramaseshagiri* (C.M.A. 553/38), (1940) 2 M.L.J. (N.R.C.) 62.

(41) *Venkateswara Ayyar* v. *Ramaswami Ayyar*, 53 L.W. 24 : (1941) 1 M.L.J. 9 : 1941 M.W.N. 326 : 1941 M. 403.

(42) *Ramaswami Ayyar* v. *Ramayya Sastrigal*, 53 L.W. 190 : (1941) 1 M.L.J. 295 : 1941 M.W.N. 204 (2) : 1941 M. 571.

Rs. 3,600 and fixes costs Rs. 1,515-8-0. Judgment-debtor deposited in Court in 1935 towards the decree Rs. 8,500 which they raised on a mortgage of one of the items of the hypotheca with the leave of the Court. In 1936, a further sum of Rs. 500 was paid towards the decree and part satisfaction was recorded to the extent of Rs. 2,000. There was evidence in the case, *i.e.*, order of assessment of decree-holder to Income-tax that he had appropriated in his account Rs. 3,500 towards interest and Rs. 5,000 towards principal. It is for judgment-debtor to show that no appropriation was made towards interest.[43]

(*d*) The effect of procedure of payment into Court and then getting the Court to pay the money out again to the decree-holder is to appropriate the payment to the particular decree and after that has been done, the payment can no longer be regarded as unappropriated payment.[44] If payment is made in September 1937 towards a money decree, not certified nor partial satisfaction of which was recovered but on receipt of which was given by debtor, creditor has appropriated it towards interest.[45]

Renewed pronotes.—When there is a payment towards the principal of a renewed pronote, the parties actually intend to appropriate the payment towards principal of the renewed note, which comprises both the principal and interest of earlier notes and it could not be treated to be towards notional principal (original principal together sums subsequently advanced as principal) as calculated according to the explanation to S. 8.[46] Open payments made in respect of a pronote must be deemed to have been appropriated when the amount of the note was calculated and the pronote was renewed, and the debtor has to prove that they were not appropriated towards interest.[47] When a fresh pronote was executed after deducting payments with counter-interest, it must be deemed that the appropriation was made at the time of the fresh note and interest outstanding at the time of fresh note must be deemed to have been satisfied by the payment and balance if any appropriated to principal. The onus lies heavily on the debtor to pronote that interest was outstanding on 1-10-1937 to get the benefit of S. 8.[48]

Where a payment is made towards principal of a renewed note that payment cannot be treated as a payment towards the notional principal of the previous note of which the suit note is a renewal. When a plaintiff files a suit for a certain amount giving up a small

(43) *Srinivasachariar* v. *Krishnayya Chetti*, 53 L.W. 721: 1941 M.W.N. 625.

(44) A.A.O. 433 & 478/44, 59 L.W. (S.R.C.) III (2)

(45) *Duraiswamy Mudaliar* v. *Md. Amiruddin*, (1948) 1, M.L.J. 441.

(46) *Ramenchettiar* v. *Perumal Udyar*, 53 L.W. 103: (1941) 1 M.L.J. 256: 1941 M.W.N. 328; *Narasareddi* v. *Rangareddi*, 53 L.W. 144: (1941) 1 M.L.J. 216: 1941 M.W.N. 267: 1941 M. 550. *Sultan Badsha* v. *Celin Phillip*, O.S.A. 17/48 (1949) 1 M.L.J. (N.R.C.) 73.

(47) *Perumal Naidu* v. *Raja Ammal*, (C.R.P. 75/39): (1941) 1 M.L.J. (N.R.C.) 27.

(48) *Venkayamma* v. *Ramakotaiah*, 53 L.W. 240: (1941) 1 M.L.J. 316: 1941 M.W.N. 188.

portion which he could have claimed under the ordinary law, in the scaling down process that which has to be scaled down is the debt as a whole and not the debt minus the amount given up, provided the decree shall not be in excess of the amount claimed.[49]

ILLUSTRATIONS

The original pronote of 1925 was for Rs. 200. In 1928 there was a payment which cleared off all interest and a portion of the principal and a fresh pronote was executed for Rs. 197–7–3. A third pronote for Rs. 259–9–6 was executed on 28–3–1930. A payment of Rs. 150 was a made on 9–10–1932. On 17–8–1934 the suit note was executed for Rs. 162–10–0, the figure having been arrived at by allowing counter interest on Rs. 150 and subtracting this sum including counter interest from the total amount due under third pronote with interest up to the date of renewal. The appropriation having been actually made on 17–8–1934, it should be made with respect to the state of facts as on that date and the principal of the note as on 17–8–1934 being Rs. 162–10–0 and the decree having been passed in 1935, without any further payment, in scaling down this decree the principal sum cannot be more than Rs. 162–10–0 and interest up to 1–10–1937, must be cancelled.[50]

3. Plaint before 1–10–1937.—Where a plaintiff has appropriated payments towards interest in the plaint field before 1–10–1937 appropriation cannot be re-opened.[51]

Payments after 1–10–1937 and appropriations.—In respect of a debt prior to 1932, a decree was passed before 1–10–1937, there were payments made and appropriated after 1–10–1937. "Firstly you appropriate payments under S. 19 to costs as originally decreed, that is to say, excluding interest on costs. Then you look to the state of affairs as on 1–10–1937 and you cancel so much of the debt as represents interest payable on that date, disregarding the fact that some of the interest is embodied in the decree for a fixed sum. Next you take the principal and work out the interest at the rate of the decree, six per cent. which is less than the maximum prescribed in S. 12 and appropriate the payments as on the date on which they were made, firstly, to the amount due for costs already mentioned, secondly, to the amount due for interest after 1–10–1937. Any balance will be credited towards the principal."[52]

Refund and readjustment.—The word "refund" in S. 8 (4) means only a repayment in cash and is no bar to readjustment of debt

(49) *Venktarao* v. *Apparao*, C.R.P. 2135/40, 55 L.W. (S.R.C.) 21 (2); *Subbarao* v. *Ramayya*, C.R.P. 351/41, 55 L.W. (S.R.C.) 24 (1) (a) *Rangareddi* v. *Venkatareddi*, 55 L.W. 706 (1942) 2 M.L.J. 592; 1942 M.W.N. 719: 1943 M 5: 204 I. C. 629.

(50) *Venkayamma* v. *Ramakotaiah*, 53 L.W. 240: (1941) 1 M.L.J. 316: 1941 M.W.N. 188.

(51) *Peria Karuppan Chettiar* v. *Marappa Gounden*, 52 L.W. 579: (1940) 2 M.L.J. 654: 1940 M. 67 (1); (C.M.A. 105/39) 52 L.W. (S.R.C.) 71.

(52) *Suryanarayanamurthi* v. *Veeranna*, 52 L.W. 484 (2): (1940) 2 M.L.J. 547: 1940 M.W.N. 1009: 1941 M. 226.

in accordance with S. 8 (1). "There is nothing in the clause which justifies the interpretation of it as giving sanctity to appropriations made after 1-10-1937 and before 22-3-1938. In our view the debt has to be scaled down by cancelling the interest payable on 1-10-1937, adjusting payments made firstly to costs as decreed, secondly to the amount outstanding as on the date of payment after cancelling interest outstanding as on 1-10-1937 and thirdly adjusting any balance towards the principal." In brief, payments made after 1-10-1937 should not be appropriated to interest outstanding on 1-10-1937,[53] but are available for readjustment.[54]

ILLUSTRATIONS

Payment after 1-10-1937 and before decree.—(1) Where a payment which was sufficient to discharge a debt scaled down by cancelling interest outstanding on 1-10-1937 was made on 4-3-1938 before the decree, the debt should be taken to have been discharged and the payment could not be applied towards costs under the proviso to S. 19 as it was not a payment in respect of the decree. The right of creditor in such a case would only be a decree for costs and interest thereon at 6 per cent. per annum.[55]

Realisations of decree in execution after 1-10-1937.—(2) An amount realised in execution after 1-10-1937, cannot be applied by the decree-holder to interest accruing due before 1-10-1937, so as to nullify the effect of S. 8 (1). The view that when the decree-holder had appropriated to interest money received after 1-10-1937, to readjust the money to principal after wiping off the interest which accrued due on 1-10-1937, would amount to ordering of refund which would be opposed to S. 8 (4) is erroneous.[56]

Appropriation in account.—In the case of a running account, there can be no question of appropriation but it is presumed as a matter of law, that the payment would go towards the earlier items in the accounts. A suit was filed for recovery of a sum due on account, Rs. 1,874-7-6 on 23-9-1931. Defendant's contention is that as per the statement of account Rs. 1,594-9-3 is real principal and Rs. 279-14-3 is the interest calculated up to 31-3-1928 and debited and so this is wiped out. *Wadsworth, J.*, observes: "I do not think that the petitioner is entitled to deduct the amount debited for interest at a time when the account was still running with fluctuating balances. When the account closed, there was a definite amount of Rs. 1,874-7-6 due and this must be treated as principal amount and plaintiffs will

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(53) *Periaswami Pillai* v. *Sivathia Pillai*, 52 L.W. 470 : (1940) 2 M.L.J. 498 : 1940 M.W.N. 991 : 1940 M. 112.

(54) *Ananthararama Krishna* v. *Sundaram*, 52 L.W. 431 (2) : (1940) 2 M.L.J. 550 : 1940 M.W.N. 957.

(55) *Perraju* v. *Ramayya*, (C.R.P. 882/39), 52 L.W. (S.R.C.) 29 : (1940) 2 M.L.J. (N.R.C.) 20.

(56) *Saraswathi Ammal* v. *Arabusa Sahib*, 53 L.W. 227 : (1941) 1 M.L.J. 296 : 1941 M.W.N. 270 : 1941 M. 433.

be entitled to interest thereon at 6¼ per cent. from 1–10–1937 and the decree scaled down accordingly.[57]

Pronote for interest.—Where in respect of a debt incurred prior to 1–10–1932, a pronote was executed for interest due, whether it be before 1–10–1932 or after 1–10–1932, it must be deemed to be discharged although the creditor need not have put the original debt itself in the suit.[58] A pronote representing interest due on a mortgage of 1928 was assigned in 1939 to the plaintiff who took without knowledge that it represented interest due on earlier mortgage. In a suit to enforce the pronote, the want of knowledge of the plaintiff as to the nature of consideration is no protection to a holder in due course against statutory reduction of liability.[59]

Payment.—The payment must be by the debtor to the creditor. The enjoyment of the produce under an usufructuary mortgage cannot be deemed to be a payment to creditor by the debtor falling under S. 8 (2).[60]

Interest on costs.—When there is a decree for costs which forms part of a decree being scaled down under S. 19, the provision of the decree relating to costs should be amended by process laid down under S. 8 or 9 according as the decree is before or after 1–10–1932.[61]

Counter-interest.—The mere fact of allowing counter-interest on prior open payments at the time of the renewal of a debt is not sufficient to establish an appropriation of these payments to the principal,[62] as it is nothing else than a method of calculation.

Sec. 8 (1) & (2).—Provisions of S. 8 clearly give the option to debtor to claim relief under S. 8 (1) or S. 8 (2) and when the relief is sought under S. 8 (1), the Court is not justified in scaling down the debt under S. 8 (2).[63]

Section 8 (2) and (3).—The sub-clauses 2 and 3 set down the principle of damdupat in a modified form. The Hindu Law of Damdupat is that the amount of interest recoverable at any time should not exceed the principal. Under sub-S. 2 payment of twice the amount borrowed would completely discharge the debt. Under sub-S. 3 as originally stood in the Bill, if the payment is less than

(57) *Kanakaraju* v. *Achutaramanaraju*, 51 L.W. 452 : (1940) 1 M.L.J. 600 : 1940 M.W.N. 338.

(58) (C.R.P. 769/40), 52 L.W. (S.R.C.) 4 : (1940) 2 M.L.J. (N.R.C.) 7; *Sankara Ayyar* v. *Yagappan Servai*, 52 L.W. 830 : (1940) 2 M.L.J. 874 : 1940 M.W.N. 1249 : 1941 M. 193.

(59) *Kuppanna Gounden* v. *Vellayappa Gounden*, (C.R.P.) 812/40, (1941) 2 M.L.J. N.R.C. 93.

(60) *Jagannatha Iyengar* v. *Srinivasa Chettiar*, 53 L.W. 105 : (1941) 1 M.L.J. 197 : 1941 M.W.N. 271.

(61) *Palani Gounden* v. *Muthuswami Gounden*, 52 L.W. 638 : (1940) 2 M.L.J. 707 : (1940) M.W.N. 1128 : 1941 M. 52.

(62) *Venkayamma* v. *Rama Kotaiah*, 53 L.W. 240 : (1941) 1 M.L.J. 316 : 1941 M.W.N. 188; (C.M.A. 591/38), 52 L.W. (S.R.C.) 66; (C.R.P. 1218/40), 52 L.W. (S.R.C.) 56 : 1940 M.W.N. (N.R.C.) 63 : (1940) 2 M.L.J. (N.R.C.) 56.

(63) *Venkateswarlu* v. *Narayanaraju*, 59 L.W. 203 : 1946 1 M.L.J. 272 : 1946 M.W.N. 415 : 1946 M. 380; 227 I.C. 564.

twice the principal, the shortage, or the principal, whichever is smaller, is repayable. As it stood the principal amount was always recoverable. To cover the case when the amount paid goes, besides discharging the interest due, in reduction of the principal, the words "such portion of the principal amount as is outstanding" are added, so that the remaining principal only would be repayable. The words "repaid by way of principal or interest" indicate that no regard should be had to the head under which the payment was made. "The sub-sections are in the nature of proviso to S. 8 (1), whose operation is limited and qualified by these provisions."[64]

A debtor is not entitled to split up a debt into its component parts and scale down one part under sub-section (3) and another part under sub-section (1). [65]

Section 8 (3).—A debt scaled down under S. 8 (3) will carry interest under S. 12 from 1-10-1937 the date mentioned in S. 8 (1).

In negativing the contention that in applying S. 12 when the debt was scaled down under S. 8 (3) it must be scaled down up to the commencement of the Act, their Lordships observed: "It is true that sub-S. 3 does not mention the date up to which the debts have to be scaled down thereunder, but the latter part of that sub-section which makes repayable the principal amount or such portion of the principal amount as is outstanding, if it happens to be smaller than the amount arrived at by the process indicated in the first part clearly refers back to the result of applying sub-S. 1 under which all interest payable on 1-10-1937 is wiped out."

Proper procedure for working out the benefits of Act.—The trial Court held that the defendant was not an agriculturist and therefore not entitled to the benefits of the Act. The appellate Court reversed the decision and held that he was an agriculturist entitled to the benefits of the Act. On the question whether suit should be remanded and the appellant given a fresh opportunity to adduce oral and documentary evidence as to appropriation of payments made by him, it was held that when there was a definite issue raised whether the defendant was an agriculturist and to what benefits he was entitled under the Act, it was his duty to have adduced at the trial itself all evidence regarding the issue framed in the suit. The appellate Court, reversing the finding of the trial Court, and holding that the defendant was an agriculturist, can itself go into the materials existing on record and give him such benefits as he is entitled to under the Act and avoid a remand.[66]

Costs.—Plaintiff is entitled to costs on the uncontested scale so far as the admitted amount of the claim is concerned and on contested

(64) *Sevugam Chettiar* v. *Ranganatha Mudaliar*, 52 L.W. 788 : (1940) 2 M.L.J. 870 : 1940 M.W.N. 1222 : 1941 M. 288.

(65) *Venkatareddi* v. *Venkatanarayana*, C.M.A. 543/39, 54 L.W. S.R.C. 37 : (1941) 2 M.L.J. (N.R.C.) 43 : 1941 M.W.N. N.R.C. 92 (1).

(66) *Ganappa* v. *Gundappa*, A.S. 1/39 (1941) 2 M.L.J. (N.R.C.) 33.

scale to the extent to which the claim was actually contested.[67] Where there was an exchange of notices between the parties, the defendant expressing willingness to pay the amount as per the Act but not offering any specific amount or making a proper tender and as soon as the suit was filed, he deposited the amount as scaled down under Act, plaintiff is entitled to proportionate costs, the defendant being entitled to costs on amount disallowed.[68]

Previous Law—Explanation.—This explanation lays down the method to arrive at the original principal. The renewal or inclusion in a fresh document must be in favour of the same creditor by the same debtor.[69]

Renewal, etc., by the same debtor.

ILLUSTRATIONS

(1) A mortgage decree was obtained against *B* and before the sale of hypotheca, *A* and his sons purchased the mortgage property and executed a pronote to satisfaction of the mortgage decree. The mortgage debt is extinguished and a new debtor comes into existence.[69]

(2) Where a pronote executed by *A* was discharged by a pronote by *B* in favour of the same creditor, *A's* pronote cannot be said to have been renewed or included in a fresh document,[70] by the same debtor.

(3) To the extent to which the suit note includes an amount on a previous note from a different set of debtors, there is no renewal within the meaning of the explanation.[71]

Common debtors.—It is not necessary that parties to the earlier and later debts should be absolutely identical. A debt due jointly and severally by *A* and *B* may be included in a fresh document executed by *A* alone, or debt solely due by *A* may be included in a fresh document by *A* and *B*. So far *A* is concerned, he is a debtor common under both instruments and though the transaction in such cases cannot be deemed to be a renewal in the strict sense of the term, it would amount to an inclusion of pre-existing liability of *A* the common debtor, and the process laid down in the explanation will apply.[72]

(1) A pronote of 1929 executed by *A*, *B* and *C* was discharged by another note of 1932 by all of them. On 29-7-1935 this note was renewed by *A* and *B*. *A* and *B* being common debtors under the note of 1932 and of 1929, the debt of 1932 was due jointly and severally

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(67) *Rangaswami Iyer*, v. *Jainabibi Ammal*, 55 L.W. 247, (1942) 1 M.L.J. 448: 1942 M.W.N. 232: 1942 M. 50/7: *Narayanabhat*, v. *Rama*, 55 L.W. 201: (1942) 1 M.L.J. 453: 1942 M.W.N. 235: 1942 M. 551.

(68) *Raghavayya*. v. *Sitaramayya*, C.R.P. 507/40, 55 L.W. (S.R.C.) 5 (2).

(69) *Ramaswami Chettiar*, In re, 50 L.W. 523: (1939) 2 M.L.J. 609: 1939 M.W.N. 900: 1940 M. 58.

(70) *Neelappa Reddiar* v. *Solaimuthu Udayar*, 52 L.W. 500: (1940) 2 M.L.J. 517: 1940 M.W.N. 1007: 1941 M. 58.

(71) (C.R.P. 276/39), 52 L.W. (S.R.C.) 24.

(72) *Karuppan Chettiar* v. *Appaji Naidu*, 52 L.W. 678: (1940) 2 M.L.J. 786: 1940 M.W.N. 1135: 1941 M. 202.

from *A*, *B* and *C*. So the note of *A* and *B* in 1935 is a renewal falling within the explanation of S. 8.[73]

(2) A debt due from *A* and *B* prior to 1932 ripened into a decree in 1933 to discharge which a pronote was executed by *A* and *C*, the latter having nothing to do with the earlier debt. In an application by *A* and *C* to scale down the debt, it should, as far as *A* is concerned, be scaled down on the basis of the original liability, but as against *C* the scaling down should be on the basis of the pronote under S. 9 of the Act.[74]

Renewal must be by agriculturist.—Section 3 (iii) defines the debt as one due from an agriculturist. Both the prior debt and the second debt renewing it must fall within the definition of debt under S. 3 (iii), and so must be due from an agriculturist. The renewal must be by the agriculturist debtor.

ILLUSTRATIONS

(*a*) A debt was incurred by *A* who is a non-agriculturist on 28-5-1930 and it was superseded by another debt by *A* and *B*, who is an agriculturist on 8-10-1934. This is not a renewal within the meaning of the explanation and *B* cannot claim scaling down,[75] under S. 8.

(*b*) The original promisor who died before the Act, is a non-agriculturist. The sons became liable on his death. There would be no question of applying the explanation which only applies to renewals of debts which are due by agriculturists. The most that the sons can claim is that interest on the debt shall be scaled down under S. 9 with effect from the date on which they became liable on the death of their non-agriculturist father.[76]

(*c*) The sole legatee under a will executed in 1936 a pronote in discharge of earlier pronotes executed by the testator who died in 1935. To treat the note of 1936 as a renewal of prior notes, the legatee must show that they were due by an agriculturist, *i.e.*, the maker of the notes, *i.e.*, the testator was an agriculturist on and after 1-10-1937. The testator having died in 1935, cannot be treated as an agriculturist on 1-10-1937 and the Court should not go behind the note of 1936.[77]

The parties not strictly identical.—It is not necessary that parties to the renewal debt must be absolutely identical.[78]

(73) *Devarayan Chettiar* v. *Subrahmanya Aiyar*, (C.R.P. 597/39), 53 L.W. (S.R.C.) 38: (1941) 1 M.L.J. (N.R.C.) 31: (1941) M.W.N. (N.R.C.) 34 (2).

(74) *Gopala Maller* v. *Velloth Krishnan*, (C.R.P. 250/39) 53 L.W. (S.R.C.) 73: (1941) 1 M.L.J. (N.R.C.) 67: (1941) M.W.N. (N.R.C.) 53.

(75) *Krishnaswami Iyer* v. *Nagalinga Mudaliar*, 52 L.W. 140: (1940) 2 M.L.J. 174: 1940 M.W.N. 722: 1940 M. 836.

(76) (C.R.P. 2021/39), 53 L.W. (S.R.C.) 60: 1941 M.W.N. (N.R.C.) 52 (1).

(77) *Nagabhushanam* v. *Venkayya*, (C.R.P. 1451/39), (1941) 1 M.L.J. (N.R.C.) 33.

(78) *Karuppan Chettiar* v. *Appaji Naidu*, 52 L.W. 678: (1940) 2 M.L.J. 786: 1940 M.W.N. 1135: 1941 M. 202.

ILLUSTRATIONS.

Heir or legal representative of debtor.—If the debt of *A* is renewed by his heir or legal representative *B*, it comes within the explanation.[79]

(*a*) *A* executed two mortgages for Rs. 2,000 and Rs. 1,000 respectively in favour of *B* in 1921 and 1922. In 1928 *B* purchased certain properties from *C* and for a portion of the sale price, assigned the mortgages executed by *A* and also gave a covenant for indemnity. In 1935 *D* an assignee from *C* brought a suit against the heirs of *A* on the mortgages and alternatively against heirs of *B* on the basis of the covenant. The suit as on mortgage was dismissed but a decree was passed against the heirs of *B* for the amount which represented the balance of purchase money for which the mortgages were assigned. In an application by one of the heirs for scaling down, the liability of the heirs of *B* could not be traced to the mortgages by *A*, but only to the assignment by *B*. The basis for scaling down the decree should not be the principal of the original mortgages by *A* but the amount for which assignments were made by *B*.[80]

Joint family debt.—(*b*) When a member of a joint family executes a fresh document for pre-existing liability binding on the family but incurred on its behalf by another member of the family, such previous debt can be regarded as renewed or included a fresh document, as the debtor in each case is the joint family.[81]

Liability of co-parcener.—It was contended that when an individual co-parcener makes himself personally liable for a joint family debt, it must be decreed that there are no liabilities due from two persons, one liability due from the family person and the other the liability due from the individual person. Apart from the pious obligation theory, when a junior co-parcener joins in execution of a document in renewal of a family debt for which he was previously liable only as a member of a joint family, he is entitled to have the debt scaled down as a renewal of previous liability binding himself.[82]

Purchaser of Hypotheca.—(*c*) Where a purchaser of property subject to a mortgage executes in discharge of the balance of the amount due under the mortgage, a pronote for that amount, the pronote is the renewal of the pre-existing liability. The purchaser is entitled to have the debt scaled down under the explanation.[83]

(*d*) When the mortgagor and purchaser are agriculturists, the purchaser can claim to have the debt scaled down on the basis that

(79) (C.R.P. 1962/39), (1939) 2 M.L.J. (N.R.C.) 95.

(80) *Kuppan Chetti* v. *Kaliammal* (A.S. 77/41), (1941) 1 M.L.J. (N.R.C.) 57.

(81) *Karuppan Chettiar* v. *Appaji Naidu*, 52 L.W. 678: (1940) 2 M.L.J. 786: 1940 M.W.N. 1135: 1941 M. 202; *Doraikannu Udayar* v. *Veeraswami Padayachi*, 52 L.W. 582: (1940) 2 M.L.J. 651: 1940 M.W.N. 1042: (1941) M. 59.

(82) *Vasudeva Nambudri* v. *Unnimaya Anteyanam*, 55 L.W. 27: (1942) 1 M.L.J. 88: 1942 M.W.N. 96: 1942 M. 298: 205 I.C. 104.

(83) Vide *Doraikannu Udayar* v. *Veeraswami Padayachi*, 52 L.W. 582: (1940) 2 M.L.J. 651: 1940 M.W.N. 1042: 1941 M. 59.

the mortgage debt for which he became liable is itself a renewal of an earlier debt in favour of the same creditor.[84]

(e) Where a person who purchases a mortgaged property, executes on the same day and as part of the same transaction, a mortgage in favour of the original mortgagee, the debt cannot be said to have been renewed or included in the later mortgage debt. No doubt the sale was anterior to the mortgage, but in point of fact they were both part of the same transaction carried through on the same day and it was not in the contemplation of the parties that the mortgage executed by the purchaser should discharge any pre-existing liability of his.[85]

(f) Where the executant of a mortgage executed prior to 1932 died in 1934 and his property comprised in the mortgage came to be owned by other persons as alienees or devisees subsequent to 1932, the liability of such persons for the mortgage debt is governed by S. 8 and not by S. 9, if they were owners of agricultural land on 1-10-1937 and were liable to pay the debt when the Act came into force.[86]

(g) The purchaser of property bound by a mortgage seeking to scale down his property liability can go back to an antecedent mortgage by the same mortgagor over the same property, the date of "property liability" being regarded as the date, when the property became bound by the antecedent debt. But when the mortgage which binds the property is traced back only to a simple money debt due from the mortgagor, the antecedent debt cannot in any way be regarded as binding the property purchased and the purchaser cannot claim that his liability is a renewal of the previous money debt due from the mortgagor. The liability cannot be scaled down with respect to antecedent pronote [87].

(h) Plaintiff's husband advanced money to *P* and his son under two mortgage Ex-C and D dated respectively 1917 and 1918, Ex-C itself is a renewal of a still earlier mortgage Ex-II between the same parties. In 1923, in execution of a decree against *P*'s son, the properties were sold in Court auction and purchased by a person who in 1924 sold them to *D*, one of the conditions of same being the discharge of mortgages C & D. There was no evidence whether *P* or his son was an agriculturist, though defendants were agriculturists. In July 1924, 1st defendant executed the suit mortgage Ex-A for Rs. 10,000 in favour of plaintiff's husband binding properties covered by Ex-C and D and a considerable extent of 1st defendant's properties. The consideration of the mortgage was discharge of earlier mortgages Ex-C and D, and discharge of pronote executed by 1st defendant in favour of a third party, and a

(84) *Venkatammal* v. *Ramaswami Iyer*, 52 L.W. 607: (1940) 2 M.L.J. 685: 1940 M.W.N. 1081: 1941 M. 62.

(85) *Seshanna* v. *Venkataramanarao*, 52 L.W. 764: (1940). 2 M.L.J. 837: 1940 M.W.N. 1217: 1941 M 60.

(86) *Bangarayya* v. *Narsimhamurthi* A. No. 450/38, 54 L.W. (S.R.C.) 58: (1941) 2 M.L.J. (N.R.C.) 59 (2).

(87) *Nachiappa Chettiar* v. *Marappa Gounder*, 55 L.W. 226: (1942) 1 M.L.J. 329: 1942 M.W.N. 213: 1942 M. 412.

sum advanced as cash. Under the Act, defendants are entitled to relief so far as portion of consideration made up of a discharge of earlier mortgages is concerned on the basis that principal of the debt is principal of Ex-D & II earlier mortgage discharged by Ex-C. Neither the fact that Ex-A bound properties not covered by the pre-existing mortgages nor the fact that Ex-A comprised additional consideration besides discharge of earlier mortgages would affect the question.[88]

(*i*) Where the property in respect of which a mortgage was created prior to 1931 was sold in 1934 by mortgagor free of mortgage and out of sale consideration an amount sufficient to pay off the mortgagee was left with the purchaser who did not pay the mortgagee as agreed, except an amount by way of interest in 1935, and on passing of the Act a dispute arose between vendor and purchaser, both of whom are agriculturists, as to which of them is entitled to benefit of reduction of the mortgage liability by reason of the operation of the Act. The sale being one free from encumbrance, the portion of sale price left in the hands of the purchaser for the specific purpose of paying off the mortgage must be regarded as having been left with him on behalf of and as agent of the vendor, and the vendor would be entitled to call upon the purchaser to account to him for any portion of purchase money which it had become no longer necessary to apply for discharge of mortgage by reason of the statutory reduction of the mortgagor debt as a result of the Act, in other words, the vendor and not the purchaser would be entitled to reap the benefit of statutory reduction of liability in a case where property has been sold free of encumbrance as distinguished from a case where the property was sold subject to the encumbrance, purchaser would be entitled to credit for the amount paid by him as interest to the mortgagee in 1935 and would be liable to refund only the unexpended balance of purchase money in his hands. Purchaser was under no liability to pay interest to vendor on the amount of mortgage from the date of sale in as much as it could not be said to have been wrongfully withheld in the circumstances of the case.[89]

(*j*) **Mortgagee purchaser.**—The fact that mortgagee purchased a part of hypotheca *in protanto* discharge of the debt does not render the balance remaining due other than the same old debt reduced by a payment and hence a claim for scaling down that balance is not unsustainable.[90]

Partition in debtor's family.—When there was a debt due by a statutory person—joint family for which is substituted another debt by an individual who formerly constituted part of the statutory person, there is a different debt and to treat this different debtor as merely

(88) *Valiammal* v. *Ramaswamy Gounder*, 55 L.W. 779: 1943 M. 127: (1942) 2 M.L.J. 720: (1942) M.W.N. 717: 208 I.C. 160.

(89) *Subbarao* v. *Varadiah*, 56 L. W. 199: (1943) 1 M. L. J. 279: 1943 M. W. N. 251: (1943) M. 482: I. L. R. 1943 M. 885: 213 I. C. 189.

(90) *Poova Chettiar* v. *Maddan*, 57 L. W. 458: (1944) 2 M. L. J. 140: 1944 M. W. N. 523: 1944 M. 549: 218 I. C. 485.

renewing his own liability which resulted from an interest in the joint family property, is to carry the theory of the property liability too far, when once it is accepted that the debtor must be substantially the same in both the transactions. On the fact that the first debtor was a joint family and the second debtor was a divided individual, the second debt cannot, therefore, be regarded as a renewal or inclusion in a fresh document of the first debt.[91]

ILLUSTRATIONS.

(*a*) On 2-3-1923 *A* and his brother *B* executed a pronote in renewal of series of earlier debts (family debts). Afterwards the family was divided and in partition, the debt was allotted to *A's* son. In pursuance of this arrangement, *A's* son alone executed a pronote on 12-7-1932 discharging the prior note of *A* and *B*. There is no renewal within the explanation.[92]

(*b*) A family debt of 1917 was the subject of an agreement at partition whereby three of the six co-parceners took over the liability in unequal shares and executed pronotes to the creditor for the amounts of these shares. When at a partition the joint liability was terminated and new and individual liabilities were created, the identity of the debt was destroyed and it cannot be said that the original debt was renewed or included in a fresh document between same parties. The debt must, therefore, be treated as one originating at the date of later pronotes sued upon.[93]

(*c*) Whereafter a partition in a Hindu family between father and his son, father executed a mortgage for a previous debt, comprising also the properties allotted to the son's share and the son in token of his assent has attested the mortgage and subsequently after father's death, son executed another mortgage binding his own property and discharging father's debt, there is a complete *novatio* and the explanation to S. 8 cannot apply to the son's mortgage so as to make it a renewal of the father's debt.[94]

Same Creditor.—The renewal or inclusion in a fresh document must be in favour of the same creditor.

ILLUSTRATIONS.

(1) A mortgage of 1926 stood in the name of *A*. In respect of interest due on the mortgage, pronote dated 12-4-1932 was executed in favour of *A's* son *B*. *B* sued and obtained a decree on the note. The mortgagee *A* and the decree-holder *B* must be considered as different creditors. Pronote of 12-4-1932 could not be regarded

(91) *Karuppan Gounden* v. *Marutha Pillai*, (1941) 1 M.L.J. 773: 1941 M.W.N. 487.

(92) *Karuppan Gounden* v. *Marutha Pillai*, (1941) 1 M.L.J. 773: 1941 M.W.N. 487.

(93) *Srinivasa Iyengar* v. *Kumaraswami Naicker*, (C.R.P. 1592/39), (1941) I M.L.J. (N.R.C.) 47.

(94) *Sabapathi Mudaliar* v. *Rajaratnam Mudaliar*, 53 L.W. 225: (1941) M.W.N. 186 (2).

as a renewal of earlier liability in favour of the same creditor. "The creditor under mortgage is the respondent's father *A* or joint family of which he is the manager. Creditor in respect of the pronote having regard to Ss. 7 and 78 of the Negotiable Instruments Act is and can only be the respondent *B*. The family or its manager *A* could not sue to recover the amount due on the pronotes even assuming that the respondent *B* took it on behalf of the joint family, and therefore could not be regarded as the creditor, though as between the family and the respondent *B*, it may be beneficially entitled to the amount. This position has become still more explained by a decree having been passed in favour of the respondent *B*." "The provision of the Negotiable Instruments Act or the Code of Civil Procedure, cannot be ignored in interpreting the terms 'creditor' or 'same creditor' in relation to the pronote or decree debt."[95]

(2) Where a mortgage was executed in favour of sons of *S* and one of the items of consideration was the discharge of a decree on a pronote in favour of *S* (mother). The creditor in respect of the pronote is and can only be the payee and the creditor in respect of the decree can only be the decree-holder (*i.e.*) the creditor in respect of pronote and decree is *S*, and not her sons, even though the sons have a beneficial interest in the debt. The mortgage is not a renewal of the pronote or the decree based thereon in favour of the same creditor.[96]

(3) Where a pronote in favour of *A* executed prior to 1-10-1932 was renewed in favour of *B* in 1936, the debtor cannot claim scaling down under S. 8 treating the debt as one incurred prior to 1-10-1932 and as the promise under the latter note was different, scaling down should be under S. 9.[97]

Heir of the Creditor.—The creditor is defined as including his heirs, legal representatives, and assigns under S. 3 (v). Therefore the renewals in favour of these heirs, legal representatives and assigns are renewals in favour of the same creditor.

ILLUSTRATIONS.

Where pronotes standing in the name of the father are renewed in the name of the son who is his heir, the latter will be the creditor under S. 3 (v). This is a renewal in favour of the same creditor. So also the renewal in favour of an assignee.[98]

Assignee.—A renewal of a debt to an assignee of an original creditor, or to the assignee of that assignee is a renewal in favour of

(95) *Varadarajam Pillai* v. *Krishnamurthi Pillai*, 52 L.W. 595: (1940) 2 M.L.J. 664: 1940 M.W.N. 1067: 1941 M. 321; disapproving Pandurang Rao, J.'s decision in *Anandan* v. *Muthukumaraswami Mudali*, 50 L.W. 587: (1939) 2 M.L.J. 658: 1939 M.W.N. 1044: (1940) M. 52 and dissenting from the judgment of Stodart, J., in (C.R.P. 963/39) 50 L.W. (S.R.C.) 64: (1939) 2 M.L.J. (N.R.C.) 77.

(96) *Raghupathi Ayyar* v. *Krishnamachariar*, 52 L.W. 673: (1940) 2 M.L.J. 756: (1940) M.W.N. 1142: (1941) M. 87.

(97) (C.R.P. 2274/39), 53 L.W. (S.R.C.) 74.

(98) (C.R.P. 1962/39), (1939) 2 M.L.J. (N.R.C.) 95.

the same creditor within the explanation, as the same creditor need not be the identical person and is to be interpreted as including assignees of the original lender.[99]

Partition in creditor's family.—When a family debt has been split up, as a result of the partition, into a number of new pronotes executed in favour of the divided individuals, they may in one way be regarded as in favour of equitable assignees of the original creditor. But the definition of the creditor in S. 3 (v) cannot be taken to include mere equitable assignees.[1] Hence there is no renewal in favour of the same creditor, so far as the new pronotes are concerned. If these pronotes will be renewed afterwards in favour of the same individuals, then they come within the explanation and the further renewed pronotes will be scaled down by tracing back only to the pronotes executed after the partition.

ILLUSTRATIONS.

(1) A pronote of 15-5-1930 was executed by *A* in favour of *B* and his brother *C*. After the death of *C*, *B* and *C*'s son, at the partition agreed that the balance due under the note should be divided equally between them. The debtor *A* accordingly executed two pronotes, one in favour of *B* and the other in favour of *C*'s son on 29-9-1934. This note is not a renewal of 1930 pronote and should be scaled down under S. 9. The division of the original debt into two equal shares does not affect the principle that when a single debt is superseded by two or more new and separate debts each in favour of one of the persons who take the family debt, there is no renewal.[2]

(2) One *A* and two of his sons *B* and *C* executed a pronote for Rs. 7,000 in 1922 in favour of *S*. In a partition in 1925 after the death of *S*, his two sons *X* and *Y* divided the debt between them and in pursuance of such division, *B* and *C* executed a pronote for Rs. 4,900 to one son *X* and another promissory note for Rs. 2,600 in favour of the other son *Y*. In 1928 *B* and *C* and the other two sons of *A* who did not join in the execution of the earlier notes, executed two pronotes for Rs. 5,400 to *X* and Rs. 2,200 to *Y* respectively in discharge of prior pronotes. In 1931 *C* separated himself from his brothers and his other three brothers who continued joint, executed two pronotes to *X* and *Y* respectively in settlement of the debts due under

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(99) *Kodandaramayya* v. *Venkatareddi*, 52 L.W. 484 (1): (1940) 2 M.L.J. 553: (1940) M.W.N. 1044: (1941) M. 74 (1); *Govindarajulu* v. *Seshayya*, (C.M.A. 83/39) 52 L.W. (S.R.C.) 59; *Godavarthi Surayya* v. *Mantravadi Gopalam*. (C.R.P. 618/39) :-(1940) 2 M.L.J. (N.R.C.) 9.

(1) (C.R.P. 1308/39), 53 L.W. (S.R.C.) 29: 1941 M.W.N. (N.R.C.) 34.

(2) *Venkateswarlu* v. *Venkatarangam*, 53 L.W. 642: (1941) 1 M.L.J. 718: 1941 M.W.N. 501. But *vide* contra. *Suryanarayana* v. *Viswanadham*, (C.R.P. 331/39), (1940) 2 M.L.J. (N.R.C.) 27; holding that where a creditor becomes entitled to a pronote belonging to joint family at a partition with his coparcener and fresh pronotes are executed in his favour by debtor he cannot content him self with producing the pronotes executed in his favour alone and he is bound to produce, if available the pronotes anterior to the date of partition, also the account books of the joint family, to enable the debtor to establish a claim to relief under the Act. This is no longer good law.

the pronotes of 1928. In respect of these pronotes decrees were obtained by *X* and *Y*. (1) As various pronotes were executed on behalf of the joint family of *A* and his sons, the debtors are substantially the same. (2) The creditor in respect of each set of pronotes (*i.e.* *X* or *Y*) executed subsequent to the partition in the creditor's family is also the same and the debt under each of the decrees obtained by *X* and *Y* can be traced back to the pronotes of 1925 which were executed in pursuance of the division of the original debt at partition between *X* and *Y*. " It has been argued that in view of the definition of 'creditor' as including " his heirs, legal representatives, and assigns," the promissory notes taken by the sons of *S* (*i.e.*, *X* and *Y*) though for distinct portions of the debt due under the original note executed in his favour, must be regarded as a renewal of that debt or at all events its inclusion in a fresh document. But it seems to us that the explanation to S. 8 requires that the debt must continue in substance to be the same though the amount and the parties under the various documents given as vouchers for it need not be strictly identical. This requirement cannot be regarded as satisfied when the debt is divided among the heirs of the creditor and the debtor executes a fresh instrument for a part of the debt in favour of each of such heirs. (3) The earliest pronote of 1922 having been executed in favour of the father of *X* and *Y* (*i.e.*), *S* and the debt having been split up at the subsequent partition, the same cannot be said to have been renewed or included in the subsequent pronotes of 1925 within the explanation.[3]

Renewal in favour of partners.—In settlement of Khata account, a pronote was executed in favour of the partners *A*, *B* and *C* by *D*. *D* subsequently executed another pronote in favour of *A* alone in discharge of the first note. An assignee of the second pronote from *A* filed a suit thereon. The creditor under the second pronote is not the same as under the first pronote, within the explanation. The debt cannot be scaled down beyond the subsequent pronote executed in favour of *A* alone.[4]

Debt due to dissolved firm.—In 1927, a pronote was executed in favour of *R* and *S*, members of an unregistered partnership. There was subsequent dissolution of the partnership as a result of which the debt fell to the care of *S*. The debtor then executed a mortgage on 12-4-1934 in favour of *S* for the amount due. There was no endorsement of pronote and no document assigning the note to *S*. The antecedent pronote which could be enforced only by the promisees jointly; was a debt in respect of which there were two creditors and the mortgage to one of them alone was not to the same creditor as under the antecedent pronote. Hence mortgage could not be treated as renewal of pronote.[5]

(3) *Rama Subbaiar* v. *Rama Iyer*, 52 L.W. 963 : (1941) 1 M.L.J. 39 : (1941) M.W.N. 54.

(4) *Bullayya* v. *Lakshminarayana*, (C.R.P. 1430/39), (1941) 1 M. L.J. (N.R.C) 32.

(5) *Swami Chetti* v. *Lakshmi Reddi*, 57 L.W. 457 : (1944) 2 M.L.J. 142 : 1944 M. 499; 1944 M.W.N. 519.

Process under explanation repeated.—In scaling down under S. 8, the process adumbrated in the explanation should be repeated with respect to each preceding debt till the principal originally advanced is arrived at.[6]

Advanced as principal.—The words "advanced as principal" must be read in their ordinary everyday sense as referring to actual fresh loans and not as referring to arrears of interest treated as principal at the time of renewal of the pronote.[7]

Benami.—In regard to decrees based on a pronote, it is not permissible to contend that the decree-holder is a benamidar for another person, for the purpose of showing that the debt is a renewal in favour of the same creditor.[8] It is not open to a debtor to adduce evidence that the suit mortgage debt is a renewal of prior decree debt in favour of the same creditor, when this prior decree which was in respect of a pronote debt is expressly in favour of another creditor (mother of the creditor) of the mortgage debt, *i.e.*, the payee is really a benamidar for her sons.[9]

Explanation II.—This is a new explanation inserted by the Amending Act XXIII of 1948. Great detriment is caused to agriculturist debtors in cases where they borrowed the principal in cash and agreed to repay it in kind owing to considerable increase in prices of commodities to be paid in kind, thereby enuring to the unlawful gain by the creditors. It is equitable in cases of such agreements to allow the agriculturist debtors to repay in cash according to the rate, if any, stipulated in the agreement, or in the absence of which, at the market rate prevailing at the time of payment. By this amendment the difficulty and obstacle faced in working the existing provisions of the Act to further the object affording relief to the indebted agriculturists owing to the view taken by Courts, are surmounted with effective benefit to the debtors.

Explanation III : Change in Law.—To remove the effect of various decisions of the High Court turning on the interpretation of words "same creditor", and thus to set at rest the conflict arising therefrom and to forward the smooth working of the relief to agriculturists, this new explanation is added by the Amending Act XXIII of 1948. Now the renewal need not be by the same debtor in favour of the same creditor. All renewals, irrespective of the identity of parties, will come within the scope of the Act. Thus

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(6) *Adiraju* v. *Veerayya*, 52 L.W. 511 : (1940) M.W.N. 1025; *Chidambara Iyer* v. *Manickavasagam Pillai*, 52 L.W. 204 : (1940) 2 M.L.J. 232 : (1940) M.W.N. 800 : (1940) M. 796.

(7) *Godavarthi Surayya* v. *Mantravadi Gopalam*, (C.R.P. 618/39), (1940) 2 M.L.J. (N.R.C.) 9.

(8) *Varadarajam Pillai* v. *Krishnamurthi Pillai*, 52 L.W. 595 : (1940) 2 M.L.J. 664 : 1940 M.W.N. 1067 : 1941 M. 321.

(9) *Raghupathi Ayyar* v. *Krishnamachari*, 52 L.W. 673 : (1940) 2 M.L.J. 756 : (1940) M.W.N. 1142 : (1941) M. 87.

the case law [10] that has overgrown round the words "same creditor" is now obsolete.

The renewal or inclusion in a fresh document may be either before or after the Act. Prior to this amendment, Courts have held that there can be no scaling down of debts renewed after the commencement of the Act. Now the debts renewed after the Act came into force also should be scaled down. The question whether a plea of benami can be raised as no importance now owing to the change in language unlike the state of law previously existing [11].

Integrity of debt broken.—Where a debt has been split up into two portions, one portion being discharged by the execution of a mortgage, the integrity of the original debt is broken up and it cannot thereafter be said that the original debt has been renewed or included in the mortgage so as to bring into force the explanation. [12]

Consolidation of separate debts.—Where separate debts towards which payments have been made have been consolidated into a single debt, payments made towards the separate debts should be clubbed together and treated as payments towards the consolidated debt for purpose of applying sub-sections (2) and (3). The explanation says that where a debt has been renewed, the principal advanced together with such sums as have been subsequently advanced as principal shall alone be treated as the principal sum repayable. "This applies to the whole of S. 8, and not merely to the 1st clause thereof. Applying this explanation to clauses (2) and (3), it seems to follow that where the word 'principal' is used in these clauses, the Legislature intended to refer not to the actual principal of the debt subsisting when the Act came into force, but to what we have described as the notional principal calculated in the manner laid down in the explanation . . . We must take into account payments made towards component parts of that principal having regard to the way in which it is to be calculated by totalling the sums advanced at different stages. In fact,

(10) *Papiah* v. *Ramapunniah*, 54 L.W. 471 : (1941) 2 M.L.J. 566 a case of tripartite agreement; *Narayanamma* v. *Venkatachelam*, 54 L.W. 517: (1941) 2 M.L.J. 703 : 1942 M. 143; *Venkatarama Ayyar* v. *Sreenivasa*, 56 L.W. 514 : (1943) 2 M.L.J. 352 : 1943 M.W.N. 637 : 1944 M. 31 : I.L.R. 1944 M. 378; *Govinda Nair* v. *Sreenivasa Pattar*, 61 L.W. 730 : (1948) 2 M.L.J. 463; partition in debtor's family and renewals; *Mallayya* v. *Mallayya*, (1941) 2 M.L.J. 1085; 1942 M. 280: partition in creditor's family; *Sundar Raja Iyengar* v. *Ramaswami Reddiar*, 57 L.W. 563 : (1944) 2 M.L.J. 329 : 1944 M.W.N. 740 : 1945 M. 116 renewal in favour of different managers; *Anjaneyulu* v. *Sarvayya*, 58 L.W. 565 (2) : (1945) 2 M.L.J. 411 : 1945 M.W.N. 688 : 1946 M. 154 : 224 I.C. 141; *Vissanna* v. *Appalanarasayya*, (1944) 2 M.L.J. 390; *Venkataraju* v. *Govindayya*, 55 L.W. 785 : 1942 M.W.N. 718 : 1943 M. 168 : 205 I.C. 421; *Sethu Rao* v. *Venkata Reddi*, 56 L.W. 415 : (1943) 2 M.L.J. 155 : 1943 M.W.N. 550 : 1943 M. 664 : Heir renewing a debt.

(11) *Narayanamma* v. *Venkatachelam*, 54 L.W. 517: (1941) 2 M.L.J. 703 : 1942 M. 143.

(12) *Ramanatham* v. *Narayanaswami*, A.A.O. 151/45; 59 L.W. (S.R.C.) 54 (1); *Venkanna* v. (1) *Nagarathnam*, A.A.O. 127/45; 59 L.W. (S.R.C.) 87 (1); *Hanumantha Rao* v. *Chinaramu Naidu*, 56 L.W. 82 (2) : (1943) 1 M.L.J. 190 : 1943 M.W.N. 120: 1943 M. 338 : 210 I.C. 234.

Legislature seems to have treated debts which have a long antecedent history and became consolidated by the addition of varying advances at different times, as if the whole liability were a single advance, the principal of which is the sum total of the various sums actually advanced; that is to say, the Legislature seems to have ignored the anomaly resulting from payments made towards one portion of principal being regarded as payment towards the principal as a whole. We wish to safeguard ourselves against making any pronouncement upon what would be the position if the composite debt were made up of two antecedent transactions one of which is protected from the procedure under the Act."[13]

Surety.—After a mortgage decree had been granted the mortgagor filed a suit for redemption which was dismissed. The mortgagor appealed and obtained an order for stay of execution on security for the decree amount being given by a surety. That was in 1935. The appeal was eventually dismissed, and the decree-holder sought to execute the decree against surety and the judgment-debtor. Both claimed to have the decree scaled down. On the question of the extent of right of surety to the benefits of the Act, the terms of surety's liability shall be strictly construed, and having regard to the fact that security was for the decree amount, the surety's liability is for no more than the amount of decree ultimately scaled down in favour of the judgment-debtor.[14]

Endorsee's liability.—A transferee of a pronote who has obtained a decree against the maker and the endorser is entitled against the endorser to treat the latter as his debtor from the date of endorsement. The date of debt will be the date of endorsement and interest to be cancelled under S. 8 will be interest accruing from date of endorsement to 1-10-1937.[15]

Payment by non-agriculturist.—Where a Hindu father, a non-agriculturist, who paid more than twice the principal in respect of a pronote originally executed in 1919, and subsequently renewed and died in 1938, prior to commencement of the Act and there was nothing to show that he made payments as Manager of joint family out of family funds, his sons who were agriculturists and from whom the debt was due at the time when the Act came into force were entitled to have the debt scaled down under S. 8 (1). The creditor would be entitled to a decree for original principal with interest at 6¼% per annum from 1-10-1937 until the date of decree and subsequent interest at Court rate.[16] Where the effect of an appropriation of payments by a

(13) *Venkatasiddayya* v. *Sanjappa* 56 L.W: 249: (1943) 1 M.L.J. 321, 1943 M.W.N. 219: (1943) M. 479. 209 I. C. 461.

(14) *Puzhithara Moidin Haji* v. *Puthummanil Thithiya Kuttiamma*, AA. 167/41, (1943) 1 M.L.J. (N.R.C.) 9 (5).

(15) *Narayana Reddi* v. *Molakanna*, C.R.P. 738/42, (1943) 1 M.L.J. N.R.C. 9 (1).

(16) *Alamelu Ammal* v. *Uppili*, C.R.P. 912/40, 55 L.W. (S.R.C.) 15 (2) (*a*): 1942) I.M.L.J. (W.R.C.) 27.

non-agriculturist co-debtor has been to discharge a decree for interest and costs and the agriculturist debtor contended that the agreement between the decree-holder and co-debtor by which appropriation was made was contrary to the provisions of the Act, which under S. 7 can be ignored and the Court can reappropriate the payment made by the non-agriculturist debtor on the basis that there was no interest outstanding under the decree to which it can be adjusted. There is no power under the Act to tear up an appropriation made at the instance of one of two joint debtors merely in order that the joint debtor who is an agriculturist may get cancelled the interest which is no longer due and obtain an additional advantage from his co-debtors' payment by way of reduction of principal.[17]

Adjustment—A payment.—*A* agreed prior to 1931 to finance the purchasing of property in Court auction by *B*. *B*, in return, agreed to convey half the property to *A* in consideration of his contributing his proportionate share of the price. *B*, in pursuance of the agreement, executed pronotes for the payment advanced by *A*. Subsequently on a settlement of account in 1937, there was an adjustment of the amount due from one to the other, and for the balance due, a suit was filed by *A*'s heirs against *B* on the pronote executed by *B* for such balance. It was the intention of the parties that *B* should be under unconditional liability to repay to *A* the amounts in respect of which *B* originally executed the pronotes and the liability arose as soon as those pronotes were executed, there being nothing to prevent *A* from maintaining suits without reference to the details of joint undertaking. If *A* had received more than the amount of the debt as scaled down by means of excess adjustment of the debt due from him to *B* in respect of his liability to contribute, such a settlement should properly be treated as payment for purpose of S. 8 of the Act and if by such process nothing remained due to *A*, the suit had to be dismissed.[18] The applicant obtained an assignment of decree O. S. 383 of 1935 for a sum of Rs. 885 obtained against *R*. *R* had obtained a decree O.S. 491 of 1935 for a sum of Rs. 833 against applicant. The applicant filed three Execution petitions, the first, the main Execution petition, to execute the decree in O. S. 383 of 1935 as assignee, the second to record part satisfaction of the decree in O. S. 383 of 1935 by adjustment of decree in O. S. 491 of 1935, and the third for entering full satisfaction in O. S. 491. While these three matters were pending, *R* filed an application for stay of execution in O. S. 383 against himself claiming to be an agriculturist entitled to benefits of Ss. 19 and 20. A stay was granted and he followed it up by a substantive application under S. 19. As a result of these proceedings the Lower Courts rejected the applicant's applications to adjust two decrees and to execute only for balance of a greater decree. Since adjustment and recording of

(17) *L. M. Bank* v. *Kittuchami Goundan*, C.R.P. 486/43 : (1943) 2 M.L.J. (N.R.C.) 25.

(18) *Subbarao* v. *Viraswamy*, 58 L. W. 575 : (1945) 2 M.L.J. 429 : 1945 M.W.N. 692 (2): 1946 M. 137.

satisfaction had not been carried out before *R* claimed benefits of the Act, and obtained stay in O. S. 383, it was not possible to adjust the two decrees or permit execution for balance of decree in O. S. 383 after such adjustment asked for.[19]

When to be an agriculturist.—A pronote had been executed by a person who was not an agriculturist on 6–4–1920. A decree thereon had been obtained on 1–11–30. The judgment-debtor died on 27–9–35. On an application after the Act came into force by the heirs of the debtor brought on record as legal representatives in the execution proceedings, to have the decree scaled down on the ground that they are agriculturists entitled to scaling down benefits although their father whose liability they inherited was himself not an agriculturist. It is immaterial whether the debtor was or not an agriculturist when the debt was incurred actually, where it was incurred prior to 1–10–1937. Petitioners' succession to father's liability would not be the basis of any new liability. The material dates with respect to which agriculturist character has to be determined for the purpose of awarding relief under S. 19 are 1–10–1937, 22–3–1938 and the date of application.[20]

Indemnity for loss in realisation.—Where in 1930 the defendant who owed Rs. 11,854 to the plaintiff being unable to pay the amount in cash, assigned to plaintiff certain pronotes and mortgages aggregating in value to Rs. 9,838 in full satisfaction, undertaking to idemnify the plaintiff against loss in realising the debt by reason of any dispute, and as a result of the operation of the Act, the plaintiff had incurred loss owing to debts assigned to him having been scaled down under Act in1938, the defendant was by reason of his undertaking to indemnify the plaintiff against loss as above mentioned, was bound to make good the loss to the plaintiff and this liability arising out of a contract absolute in terms covered also losses attributable to a change in law which the parties could not have foreseen at the time of the contract, since if the possibility of law scaling down these debts had occurred to parties they would not as fair and reasonable men have agreed that the obligation to indemnify should be at an end. The date with respect to which the liability of the defendant as an agriculturist as regards this loss should be determined under the Act would be, not the date of assignment in 1930, but the date of actual loss by reason of scaling down operation in 1938, and such loss would be the difference between the full amounts payable under the bonds and the amounts actually realised by the plaintiff. The only relief which the defendant would claim as an agriculturist would be in respect of interest for the period subsequent to the date above mentioned.[21]

(19) *Rangaswamy Iyengar* v. *Gounden*, 57 L.W. 71: (1944) 1 M.L.J. 136: 1944 M.W.N. 110: 1944 M. 255.

(20) *Kona Hasan Fatimabibi* v. *Mohammad Muhaideen Nachiar*, 55 L.W. 729: (1942) 2 M.L.J. 506: 1943 M. 87: 207 I C. 205.

(21) *Janakumar Nainar* v. *Samanthabhadramurthi Nainar*, 58 L.W. 92: (1944) 2 M.L.J. 371: 1944 M.W.N. 692: 1945 M. 98: I.L.R. 1945 M. 49.

Mortgagor's Personal remedy barred, purchaser's relief.—A mortgage was executed in 1927 by defendants (1) and (2) in favour of the plaintiff. The third and fourth defendants obtained a later usufructuary mortgage binding certain portions of the hypotheca. In 1929 and 1930 there were two sales under money decrees whereby the equity of redemption in the mortgaged properties was lost to mortgagors and passed to defendants 5 to 9. In 1940 defendants 5 to 9 sold their interest in the property to *D* (10). It was common ground that the personal remedy against defendants 1 and 2 had become barred before the Act came into force. It was alleged that defendants 1 and 2 were agriculturists and also 10th defendant. But defendants 5 and 9 are admitted by non-agriculturists. In a suit on mortgage of 1927, the question arose whether defendant 10 could claim benefits of the Act with respect to that mortgage, since there was, at the commencement of the Act on 22-3-1938, no debt payable by an agriculturist, defendant 10, though an agriculturist, was not entitled to have the debt scaled down. The mere existence of a right on part of mortgagors to pay the debt would not involve the consequence of deeming them to be under liability to pay the debt when the personal remedy against them had become barred.[22]

Conditional discharge of debt by contract of sale.—Where in respect of an oral contract of 1934 by mortgagor to sell land which formed part of security to mortgagee in full discharge of mortgage debt and in pursuance of which contract the mortgagee was put in possession in 1934, the mortgagor agreeing to execute a sale deed whenever demanded, a suit for specific performance was brought by mortgagee. Contract followed by delivery of possession was intended to operate as conditional discharge of the debt and the mortgagee not having put an end to contract and claimed payment of debt, there can be no question of scaling down the debt so as to enable mortgagor to claim the difference between price fixed and amount of debt after such scaling down.[23]

The fact that plaintiff attempted to circumvent the provisions of the Act by a mis-statement of the legal effect of a contract between him and the defendant in the plaint is no ground for refusing such relief as he may be entitled to on a correct view of the fact.[24]

Bar of the same plea.—Where in a suit for injunction restraining defendants from entering on suit lands till the amount of usufructuary mortgage executed by them is completely discharged, defendants pleaded that, by operation of the Act, amount was discharged and the suit is decreed, the decree could not be resisted in execution on basis of defence which was taken in the suit and was impliedly negatived

(22) *Subbaroya Gounden* v. *Nachiamuthu Mudaliar*, 56 L.W. 623: (1943) 2 M.L.J. 434: 1943 M.W. 667: 1944 M. 82: 215 I.C. 293.

(23) *Mallikarjuna Rao* v. *Parthasarthi Rao*, 1944 M. 218: 56 L.W. 679 (1943) 2 M.L.J. 584: M.W.N. 718: I.L.R. 1944 M. 742.

(24) *Rosireddy* v. *Krishnareddi*, 57 L.W. 504: (1944) 2 M.L.J. 107: (1944) M.W.N. 622: 1944 M. 540.

by passing of the decree, that the mortgage was discharged and the decree had becom: unenforceable in consequence.[25]

Provision for debts incurred on or after 1st October, 1932.

9. Debts incurred on or after the 1st October, 1932, shall be scaled down in the manner mentioned hereunder, namely :—

(1) Interest shall be calculated up to the commencement of this Act at the rate applicable to the debt under the law, custom, contract or decree of Court under which it arises or at five per cent. per annum simple interest, whichever is less and credit shall be given for all sums paid towards interest, and only such amount as is found outstanding, if any, for interest thus calculated shall be deemed payable together with the principal amount or such portion of it as is due :

Inserted by S. 5 of Act XXIII of 1948.

Provided that any part of the debt, which is found to be a renewal of a prior debt 'whether by the same or a different debtor and whether in favour of the same or a different creditor,' shall be deemed to be a debt contracted on the date on which such prior debt was incurred, and if such debt had been contracted prior to the 1st October, 1932, shall be dealt with under the provisions of S. 8.

(2) Subject to the provisions of Ss. 21 to 25, nothing herein contained shall be deemed to require the creditor to refund any sum which has been paid to him or to increase the liability of the debtor to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed.

NOTES.

Select Committee's Report.—The Select Committee's observation with reference to this section is as follows :—" The Bill as introduced had provided that in all cases, interest should run only from 1-10-1937, at a rate not exceeding 6 per cent. per annum. The Committee has come to the conclusion that a distinction should be made between debts incurred during the predepression period when the value of money was very much less than now and the debts incurred after the depression became acute. In the case of the former, a greater extent of scaling down is considered justifiable than in the case of the

(25) *Venkamma* v. *Bapanayya*, A.A.A.O. 361/44, 59, L.W. (S.R.C.) 17 (1).

latter. It has accordingly limited the provisions which had been made in the Bill for the wiping out of arrears of interest only to debts incurred before 1–10–1932.

As regards debts incurred after 1–10–1932, the Committee thinks that the welfare of debtors would be sufficiently met by reducing the rate of interest to 5 per cent. in all cases where it is higher than 5 per cent. Where a debt incurred after 1–10–1932 is found to be wholly or in part a renewal of a debt incurred prior to that date, that debt or any part of it which may constitute such renewal will be dealt with as a debt incurred before 1–10–1932. What has been compendiously described as the Damdupat principle has been retained.

In view of the proposal for the reduction of interest, in the case of debts incurred subsequent to 1–10–1932, the invoking of that principle is unnecessary in respect of such debts and has therefore been expressly provided for only in the case of debts incurred prior to 1–10–1932.

The Committee considers that these provisions which it has made for the scaling down of old and new debts will go a great length to meeting the objection which has been raised to the provision in the Bill as introduced, for the wiping out of all interest on all debts outstanding on 1–10–1937."

The clause as drafted by the Select Committee is as follows :—

" Interest shall be calculated up to the commencement of this Act at the rate applicable to the debt under the law, custom, contract or decree of Court under which it arises or at 5 per cent. per annum, whichever is less, only such amount as is found outstanding for principal and interest calculated at such rate shall be deemed payable :

Provided that (*i*) full credit shall be given to the debtor for all sums paid by him and *payments made for interest in excess of the amount due as calculated at the above rate shall be credited towards the principal.*"

Clause explained.—" The clause, as it stood, meant to give credit to all payments not only towards interest calculated at 5 per cent. but also towards principal, if the actual payment exceeded the amount even at 5 per cent. The present proposal which I make goes to make the position of the creditor better in *saving the principal under any circumstances*.........The principal would always remain due. That is to say, in regard to the transactions after 1932, the present proposal seeks to maintain the principal that is due, apart from whatever amount was paid. This is a change worse for the debtor and better for the creditor. It is intended to save the principal under any circumstances." (*Vide* Premier's speech at page 483 of Volume 4 of the *Madras Legislative Assembly Debates*).

" The proposal under the amendment I moved [S. 9 (*c*) as it stands in the Act], is, that, if a man has borrowed after 1932, his principal remains due if it has not been paid as principal paid-up.

The contract rate is scaled down to 5 per cent. but not only that, if over-payment is made it shall be credited towards interest which has not been paid. If a man has paid for one year interest at 18 per cent. it will go towards, say three and half years' interest at 5 per cent. If a man has paid 18 per cent. promptly for one year, and it is due for two and half years, he will not still have to pay further interest for those two and half years. This is the meaning of this amendment. But that process of spreading out actual payment on a legal fiction of 5 per cent. interest will not go to the point of reducing the principal which is due. Of course it may be said that we deny him the advantage of the payment up to the point where it reaches the principal." (*Vide* Premier's speech at page 485 of Volume IV of *Madras Legislative Assembly Debates*).

Scope.—S. 9 covers only debts incurred from 1–10–1932 to 22–3–1938 the date of commencement of the Act.[26]

Mode of working out.—The proper mode for working out the liabilities under S. 9 is as follows :—

(*i*) Calculate the interest on the debt up to the commencement of the Act at the rate of 5 per cent. per annum simple interest.

(*ii*) Credit to the amount of interest so calculated the payments actually made or appropriated towards interest.

(*iii*) Give a decree for any balance of interest, thus calculated together with whatever is due for principal, no credit being given towards principal on account of any excess payment towards interest resulting from the scaling down process.

Decisions regarding appropriations under S. 8[27] are not applicable to cases under S. 9.

Payment towards interest.— A payment in full discharge of interest is a payment towards interest.[28] Interest should be calculated at 5% up to the commencement of Act and credit should be given for interest already paid and the amount outstanding for interest should be added to the principal outstanding.[29] If the payment made towards interest is in excess of the amount calculated at 5%, the excess amount will be retained by the creditor and will not be adjusted in reduction of the principal and there is nothing contrary to the general principle in allowing a creditor to retain that which has been willingly paid to him.[30] Sub-S. (2) also goes to show that no refund will be given by creditor.

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(26) *Thiruvengadatha* v. *Sannappan*, 54 L.W. 229 : (1941) 2 M.L.J. 307. 1941 M.W.N. 800 : (1941) M. 799 (2).

(27) *Singachala Ramaier* v. *Anantha Krishna Aiyar*, (C.R.P. 1822/39), (1940) 2 M.L.J. (N.R.C.) 75.

(28) *Ibid.*

(29) *Muhammad Sahib* v. *Kunthammal Sowcar*, 52 L.W. 245 : (1940) 2 M.L.J. 185 : 1940 M.W.N. 753 : 1940 M. 807.

(30) *Lakshmi Venkayamma* v. *Venkatapathiraju*, 53 L.W. 67 : (1941) 1 M.L.J. 25 : 1941 M.W.N. 39 : 1941 M. 382.

ILLUSTRATION

On 4-3-1933 a pronote was executed for Rs. 300. In October of the same year, Rs. 100 was paid towards principal. On 18-11-1935, it was endorsed on the note "interest calculated up-to-date has been paid off in full." The plaintiff can bring a suit for Rs. 200 principal and Rs. 7-8-0 interest from 22-3-1938 (date of commencement of the Act) to the date of suit. No claim for interest should be made for period till 22-3-1938.[31]

Incurred.—'Incurred' no doubt suggests the idea of liability voluntarily incurred but the terms of Cl. (*i*) seem to indicate that the section refers not only to contractual liability but even to liabilities arising under law, custom or decree of Court. Hence the liability to pay interest imposed by the decree is governed by S. 9.[32] Incurred must be held to apply to the inception of the debt, *i.e.*, must refer to the time when the original obligation was created.[33]

Interest calculated on what amount.—Interest that has to be calculated is on the amount of debt which was originally incurred and not on the amount of principal due as the result of adjustment made at much later date.[34] A suit was brought on a pronote of 22-9-1937 executed for the balance due on mortgage bond in favour of the same creditor executed on 19-12-1932 by present defendants and some others. There had been considerable payments made under the mortgage bond. The defendants contended that under S. 9 they were entitled to have the debt scaled down on the basis of original mortgage advance of 1932, payments thereunder made towards the interest being adjusted towards interest on the original principal at 5%. There is nothing in S. 9 which justifies the treatment of the principal of a debt as anything different from the principal of the contract actually sued on or as warranting the procedure analogous to that S. 8 which S. 9 does not seem to contemplate except for specific purpose of reducing debts which originated before 1-10-1932. His Lordship Wordsworth, J. observes: "The section does not seem to contemplate any going back to any earlier date except for the single purpose of ascertaining what is the theoretical date of debt in order to find out whether it has to be scaled down under S. 8 or not. The proviso certainly allows the Court to treat as the date of debt the date of the original advance but it is still dealing the debt that is sued upon and it is that debt which under the first clause to be scaled down by the process of recalculating the interest at 5% and adjusting to the interest so calculated the amount paid towards the interest of that debt. In my opinion the section does not contemplate the

(31) *Muhammad Saheb* v. *Kunthammal Sowcar*, 52 L.W. 245: (1940) 2 M.L.J. 185: 1940 M.W.N. 753; 1940 M. 807.

(32) *Mothai Meera* v. *Abdul Khader*, 49 L.W. 391: (1939) 2 M.L.J. 528: 1939 M.W.N. 279: 1939 M. 471: I.L.R. 1939 M. 525.

(33) (C.R.P. 1529/38), 50 L.W. (S.R.C.) 56: (1939) 2 M.L.J. (N.R.C.) 57.

(34) *Ibid.*

recalculation of interest on the antecedent debt and the reappropriation of payments towards interest made under that antecedent debt." [35] But on the other hand, His Lordship Stoddart, J., has held that "incurred" must be held to apply to the inception of the debt, *i.e.*, must refer to the time when the original obligation was created, and interest has to be calculated on the amount of debt which was originally incurred and not on the amount of principal due as a result of adjustment at much later date.[36] Bench decision of Their Lordships Wordsworth and Patanjali Sastri, JJ., is to the effect that the object of the Legislature enacting the proviso is to require the Court to trace back the debt to various renewals to the principal sum or sums originally advanced and then scale down under Ss. 8 and 9 as the case may be.[37] These decisions were not brought to the notice of His Lordship Wordsworth, J., in the above case.[35] In these circumstances, the Bench decision has to prevail and interest has got to be calculated on the original principal at 5%.

Interest on costs.—Where there is a decree for costs, the provisions of the decree relating to interest on costs should be amended by the process laid down under S. 8 or S. 9 according as the decree happens to be before or after 1-10-1932.[38]

ILLUSTRATION

In the case of a decree of 26-9-1936 (*i.e.*) after 1-10-1932 interest on costs will be scaled down under S. 9 (*i.e.*) interest will run at 5% till 22-3-1938 and thereafter at the rate of 6% (*i.e.*) the rate of the decree being less than 6¼%.[39]

Date of liability.—In order to come within the purview of the section, the liability must be incurred after 1-10-1932.

Endorsement of a pronote.—The liability of endorser arises on the date of endorsement. If this is after 1-10-1932, his liability has to be scaled down under S. 9, though the liability of maker in cases where the note was executed prior to 1-10-1932 will have to be scaled down under S. 8.

"Here there is an original pronote under which the endorser had no liability whatever. His liability was first incurred by reason of his endorsement of that pronote and the date on which he incurred that liability is the date of endorsement."[40]

(35) *Seshayya* v. *Swamireddi*, 54 L.W. 551: (1941) 2 M.L.J. 795: 1941 M.W.N. 695: 1942 M. 204 (2).

(36) C.R.P. 1529/38, 50 L.W. (S.R.C.) 56: (1939) 2 M.L.J. (N.R.C.) 57.

(37) *Chidambara Iyer* v. *Manickavasagam Pillai*, 52 L.W. 204: (1942) 2 M.L.J. 232: 1940 M.W.N. 800: 1940 M. 796.

(38) *Palani Gounden* v. *Muthuswami Gounden*, 52 L.W. 638: (1940) 2 M.L.J. 707: 1940 M.W.N. 1128: 1941 M. 52.

(39) *Veeraraju* v. *Doragaru*, 52 L.W. 674: (1940) 2 M.L.J. 758: 1940 M.W.N. 1138: 1940 M. 940; *Venkayya* v. *Chinna Subbiah*, (C.M.A. 591/1938), 52 L.W. (S.R.C.) 66: (1940) 2 M.L.J. (N.R.C.) 64; (C.M.A. 559/1938), 53 L.W. (S.R.C.) 5.

(40) *Poovanalingam* v. *Nagarathnam*, 52 L.W. 518: (1940) 2 M.L.J. 575: 1940 M.W.N. 1037: 1940 M. 943.

The extent of liability endorser of a pronote can only be determined under S. 9 as on the date on which the liability came into existence. Even if a decree is made realisable from endorser only in case the amount could not be realised from original maker, the liability of endorser cannot be said to have come into existence before he endorsed the note in favour of plaintiff.[41]

ILLUSTRATION

Where a pronote of 1924 was endorsed by the payee in 1933 to the plaintiff, the debt so far as the endorser is concerned must be held to have been incurred after 1–10–1932, relating as it does to the date of endorsement, and has to be scaled down under S. 9. As far as the maker is concerned liability must be scaled down under S. 8.[42]

Letter of guarantee.—A promissory note of 1931 was followed by a letter of guarantee after 1–10–1932. The suit ended in a compromise wherein a fixed sum was agreed to be due for the debt including interest and costs. The liability of the person under the letter of the guarantee has to be scaled down under S. 9 and not S. 8.[43]

Proviso : Renewals.—The proviso deals with the renewal of debts. The renewal contemplated in this proviso is a renewal in favour of the same creditor. The omission of words " in favour of the same creditor " (*vide* Explanation to S. 8) does not entitle the debtor to have the debt scaled down under S. 8 when the parties to the two debts are not the same. Amounts borrowed from third parties to pay an existing debt will not be a renewal but would be a new loan.

ILLUSTRATIONS

(*a*) Where a pronote executed before 1–10–1932 in favour of *A* is renewed in favour of *B* after 1–10–1932, the debtor is not entitled to have the debt scaled down under S. 8 as a debt incurred before 1–10–1932. The debt can only be scaled under S. 9 as the promisees (*i.e.*) creditors are different, and there is no renewal in favour of the same creditor.[44]

(*b*) The suit indebtedness started in dealings early in 1932 and by 1–10–1932 a sum of Rs. 350 was advanced. Between that day and commencement of the Act further advances amounting to Rs. 793 in all had been made but on the later date the principal amount had been reduced to little more than the amount of principal outstanding on 1–10–1932. A suit for Rs. 232 being the balance on a pronote, dated 11–4–1937 for Rs. 450 taken in settlement of account of previous dealings and the amount due on subsequent dealings was brought in 1939.

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(41) *Venkatasatyanarayanamurti* v. *Sri Ramulu* (1943) 1 M.L.J. (N.R.C.) 4.

(42) *Poovanalingam* v. *Nagarathnam*, 52 L.W. 518 (1940) : 2 M.L.J. 575: 1940 M.W.N. 1037 : 1940 M. 943.

(43) *Narayana Chettiar* v. *Ottuvira Goundan* (C.M.A. 72/1939), 52 L.W. (S.R.C.) 58 : (1940) 2 M.L.J. (N.R.C.) 59.

(44) *Naranappa Naicker* v. *Krishnaswami Naicker*, (C.R.P. 2274/1939), (1941) 1 M.L.J.(N.R.C.) 66.

As the payments in reduction of the principal had amounted to far more than the principal sum outstanding as on 1–10–1932 applying the general rule that payments towards principal would be deemed to have been appropriated first to earlier advances, the whole of the sums advanced before 1–10–1932 must be deemed to be discharged before the Act came into force and therefore there would be no question of scaling down this debt on the basis of renewal and taking it back to a debt anterior to 1–10–1932. The debt having started on 11–4–1937 has to be scaled down under S. 9 and must be regarded as carrying interest at 5% and payments made appropriated to principal and interest.[45]

(c) The appellants were defendants in a suit based on a settled account. The dealings between parties began in 1931 but the balance due as on 1–10–1932 was all wiped off by subsequent payments and debt remaining at the time of settlement which was on 17–6–1936 included no portion of the original debt so as to bring the transaction under S. 8. This settlement was accompanied by an agreement which stated that the amount due for principal and interest was Rs. 8,050 of which creditor agreed to give up Rs. 1,400 in consideration of the debtors agreeing to pay the balance with interest at Re. 0–12–0 per cent. per mensem before 1–4–1937 and the agreement also provided that in default the debtors should pay also the amount of Rs. 1,400 provisionally given up by the creditor. The debtor failed to make the payment in the manner contemplated. Their total payments aggregated to Rs. 2,450 the whole of which was appropriated in accounts to principal of settled debt. On the date on which default was committed the creditor debited in his account amount of Rs. 1,400 describing it as the " balance of interest due by you under terms of agreement between yourselves and ourselves." He filed the suit admitting that defendants were agriculturists and scaling down debt under S. 9 on the basis of principal of Rs. 8,050 *less* payments made together with interest at 5% up to 22–3–1938 and thereafter at 6¼%. It was contended by defendant firstly that Rs. 1,400 was penalty and secondly this amount represented interest at Re. 0–12–0 per cent per mensem and had to be scaled down to 5%. Amount of Rs. 8,050 was the amount admitted to be due on 17–6–1936 and conditional concession in respect of Rs. 1,400 became automatically cancelled on non-fulfilment of condition and therefore there could be no question of penalty in such a case. The debt in question having belonged to the class of debts coming under S. 9 had to be scaled down with reference to actual contract and there being no provision in S. 9 for reopening of this contract except to the extent prescribed in the first part of that section providing for rate of interest, it followed that principal of suit debt was the sum of Rs. 8,050 which the debtors agreed to pay with interest thereon, even though a

(45) *Satyanarayanamurthi* v. *Kanakaraju*, 55 L.W. 438 : 1942 M.W.N. 445 : 1942 M. 673 : 205 I.C. 237.

part of this amount, namely Rs. 1,400, was made up of interest due on pre-existing debt.[46]

Change in Law.—The courts have held that the renewal must be in favour of the same creditor. As S. 8 is also changed to the effect that the renewal may be by different debtor in favour of different creditor, *i.e.*, the parties thereto need not be identical. A consequential change also is incorporated in the proviso to clause (i) by inserting the words "whether by the same or a different debtor and whether in favour of the same or a different creditor."

Renewal must be by an agriculturist.—Both the prior debt and renewal must be by an agriculturist. Then only the proviso applies and the debt will be dealt with under S. 8.

ILLUSTRATION

Where a debt of 28-5-1930 incurred by *A* who is a non-agriculturist, is superseded by another debt on 9-10-1934 by *A* and *B* an agriculturist, *B* is not entitled to scaling down under the proviso.[47]

Duty of Court.—"It is the duty of the Court whenever a claim is made for interest on debts falling under one or other of these clauses to scale down the claim in accordance with these provisions (Ss. 8, 9 and 13, etc.) whether or not the debt in respect of which such claim is made is the subject matter of the proceedings. That is to say, where a claim is made for interest on a debt incurred before 1-10-1932, the Court should apply S. 8 (1) and disallow the claim, although the creditor might not have put the debt itself in suit." If it is otherwise, a creditor could defeat the object of the section by the simple expedient of suing for the interest alone in the first instance and then sue for principal, as in the case of most debts there is usually a distinct covenant to pay interest.[48]

Pronote for interest.—When a pronote was executed after 1-10-1932 for interest due on a debt before 1-10-1932 the pronote must be taken to be a renewal of previous liability to pay interest due on the debt, and by virtue of the proviso, the debt must be dealt with under S. 8 (1), and hence the pronote or decree based thereon must be deemed to be discharged, as interest outstanding on 1-10-1937.

ILLUSTRATION

For the interest due on a mortgage of 6-9-1929 which is for Rs. 800, a pronote was executed on 23-1-1937 for Rs. 595-7-0, the sum being endorsed on the mortgage bond as received for interest. A decree was obtained on the pronote. This pronote and consequent decree debt are discharged under S. 8 (1) by virtue of the proviso.[49]

(46) *Sarveswara Rao* v. *Venkatasubba Rao*, etc. 56 L.W. 154: (1943) 1 M.L.J. 231: 1943 M.W.N. 419: 1943 M. 344: 250 I.C. 231.

(47) *Krishnaswami Iyer* v. *Nagalinga Mudaliar*, 52 L.W. 140: (1940) 2 M.L.J. 174: 1940 M.W.N. 722: 1940 M. 836.

(48) *Sankara Aiyar* v. *Yagappan Servai*, 52 L.W. 830: (1940) 2 M. L.J. 874: 1940 M.W.N. 1249: 1941 M. 193.

(49) *Ibid.*

Proviso repeated.—There is nothing in the language of the proviso to suggest that it can be applied only once in the process of scaling down. It should be applied until the debt is traced back to the principal amount originally advanced. The object of the legislature in enacting this proviso is to require the Court to trace the debt back through various renewals to the principal sum or sums originally advanced and scale down under Ss. 8 and 9 as the case may be.[50]

Account.—Unless a debt falling under S. 9 relates back to a debt incurred before 1-10-1932 so as to invoke the provisions of S. 8, there is nothing in S. 9 to justify the re-opening of settlement of account or the reappropriation of payment on the basis of the hypothetical original principal, when the first loan was of 1933 only, the proviso to S. 9 cannot apply and the Court cannot reopen the settlement of account made by the parties at the end of each year so as to treat them as renewals of earlier loans.[51]

Special provision in respect of usufructuary mortgages.

S. 9-A: *Special provision in respect of usufructuary mortgages.*—(1) Where a usufructuary mortgage was executed at any time before the 30th September 1947 and the mortgagee is in possession of the property mortgaged to him, the mortgagor shall be entitled to redeem the property, notwithstanding that the time, if any, fixed in the mortagage deed for redeeming the mortgage has not arrived.

(2) Where a usufructuary mortgagee has been in possession of the property mortgaged to him for an aggregate period of less than thirty years, the mortgagor shall not be entitled to redeem the mortgage under sub-Section (1), unless he pays to the mortgagee a sum representing the difference between the principal amount secured by the mortgage and an amount bearing to the principal amount the same proportion as the period during which the mortgagee has been in possession bears to thirty years.

(3) Where a usufructuary mortgagee has been in possession of the property mortgaged to him for an aggregate period of thirty years or more, then, notwithstanding anything contained in Sections 8 and 9 or the fact that the time, if any, fixed in the mortgage deed for redeeming

(50) *Chidambara Aiyar* v. *Manickavasagam Pillai*, 52 L.W. 204: (1940) 2 M.L.J. 232: (1940) M.W.N. 800: (1940) M. 796. *Suryaprakasa Rao* v. *Satyanarayana*, A. No. 52/46, (1949) 1 M.L.J. (N.R.C.), 57.

(51) *Muthuswami Pillai* v. *Sankara Ayyar*, (C.R.P. 899/39), 53 L.W. (S.R.C.) 37: (1941) 1 M.L.J. (N.R.C.) 29.

the mortgage has not arrived, the mortgage debt shall be deemed to have been wholly discharged, with effect from the expiry of such period, or where such period expired before the commencement of the Madras Agriculturists' Relief (Amendment) Act, 1948, with effect from the commencement of that Act.

(4) The mortgagor shall not be entitled to redeem a usufructuary mortgage under sub-Section (1) or obtain possession of the mortgaged property by virtue of sub-Section (3), unless he pays to the mortgagee the cost of the improvements, if any, effected by him to the mortgaged property.

(5) For the purpose of this section, a usufructuary mortgagee shall be deemed to be in possession of the property mortgaged to him, notwithstanding that he has leased it to the mortgagor or any other person.

(6) (*a*) Except in cases falling under sub-Section (3), where the property has been leased back to the mortgagor by the mortgagee, the rent due to the mortgagee under the lease shall be deemed to be the interest on the mortgage debt and the provisions of Ss. 8 and 9 shall apply to such debt.

(*b*) In cases falling under sub-Section (3), where the property has been leased back to the mortgagor by the mortgagee, nothing contained in that sub-section shall affect the right of the mortgagee to recover any rents due to him under the lease for any period before the date on which the mortgage is deemed to have been wholly discharged by virtue of that sub-section if such rents have not become barred by limitation under any law for the time being in force.

(7) Nothing contained in this section except sub-Section (1) shall apply to any usufructuary mortgage—

(i) in respect of property situated in the South Kanara district or in the taluks of Chirakkal, Kottayam, Kurumbranad and Wynaad in the Malabar district;

(ii) in respect of property situated in any other area in the cases mentioned below :—

(*a*) Where during the period after the 30th September 1937 and before the 30th January 1948, the equity of redemption in the property subject to the

usufructuary mortgage has devolved either wholly or in part on a person by or through a transfer *inter vivos*, either from the original mortgagor or from a person deriving title from or through such mortgagor otherwise than by a transfer *inter vivos*, then, to the whole or such part, as the case may be.

(*b*) Where, during the period aforesaid, the usufructuary mortgagee or any of his successors-in-interest has transferred either wholly or in part the mortgagee's rights in the property *bona fide* and for valuable consideration, then, to the whole or such part, as the case may be:

Provided that the transferee of a usufructuary mortgage shall not be entitled to recover in respect of such mortgage, anything more than the value of the consideration for the transfer; but nothing herein contained shall, in cases where the property has been leased back to the mortgagor, affect the right of the transferee to recover the rents, if any, due under the lease, if such rents have not become barred by limitation under any law for the time being in force.

(*c*) Where the mortgagee's interest in the property subject to the usufructuary mortgage or any part of such interest belonged to, or devolved on, two or more persons and during the period aforesaid, a partition has taken place among such persons, then, to the whole or such part of the interest as the case may be.

(8) Where the equity of redemption in the property subject to the usufructuary mortgage belonged to, or devolved on, two or more persons and any one of them or any person claiming under any one of them has, during the period referred to in sub-Section (7), clause (ii) (*a*), redeemed the entire mortgage, nothing contained in this section shall affect the rights or the reliefs to which the person redeeming the mortgage might be entitled to under any other law for the time being in force as against the other persons aforesaid.

Explanation.—'Usufructuary mortgage' in this section means any mortgage by virtue of which the mortgagee is in possession of the property mortgaged, where no rate of interest is stipulated as due to the mortgagee.

S. 9-A.: Object.—This section was introduced on the recommendation of the Select Committee. In presenting this section for consideration of the Assembly, the Hon. K. Madhava Menon said: "Usufructuary mortgages where rates of interest had not been fixed were outside the purview of the original enactment. The Government, in order to bring in such cases also for relief, had proposed in the Bill that where for 25 years the mortgagee had been in possession, the mortgage should be deemed to have been discharged. The Select Committee had increased this period to 30 years and had also provided certain safeguards for *bona fide* alienees. South Canara and parts of Malabar district had been excluded from the operation of this measure a step which had evoked some criticism." But he said this exclusion was justified by the peculiar nature of the "Kanom tenure" of the area concerned and in view of certain requirements of the local law of inheritance.

S. 9 (a) 1: Mortgages before 30-9-1947.—The Hon. K. Madhava Menon, Minister of Agriculture, in his reply to the debate, stated that the Bill would only apply to debts which existed prior to 30-9-1947. If debts of agriculturists prior to 30-9-1937 still remain undischarged—a fact supported by the enquiry conducted by Dr. B. V. Narayanasamy Naidu—it could only mean that the scope of the existing Act is not wide enough or that the agriculturists are too poor even to take advantage of it. Therefore, it is clear that an amendment to the Act is necessary to bring relief to more agriculturists than could be done under the existing Act." Sub.-s (1) enables the mortgagor to redeem the property notwithstanding that the time for such redemption of the usufructuary mortgage has not arrived.

Sub.-s. 2.—This provides that where a mortgagee had been in possession for an aggregate period which was less than 30 years, the mortgagor shall not be entitled to redeem the property unless he paid to the mortgagee a sum equal to the difference between principal of the debt and an amount bearing to the principal the same proportion as the period of possession to 30 years.

ILLUSTRATION

The principal of the debt is Rs. 3,000. The period of possession is 25 years.

The proportion of period of possession to 30 years is 25/30=5/6.

Amount of principal representing this proportion—5/6 × 3,000=Rs. 2,500.

The difference between principal and the proportional amount= Rs. 3,000—Rs. 2,500=Rs. 500.

Unless Rs. 500 is paid by mortgagor, he will not be entitled to redemption.

Sub.-s. 3: 30 years.—Usufructuary mortgages, where the mortgagee has been in possession for 30 years, shall be deemed to have been discharged in full. The Hon. Minister says: "The period had not been chosen arbitrarily. The Select Committee went into the whole question and decided that even if the rate of interest had been low, the

mortgagee would have, during the past five years, made up all the loss he might have incurred in previous years and that within the stipulated period of 30 years more than double the principal would have been realised."

Sub.-s. 4 : "Costs of improvements".—Costs of improvements effected by the mortgagee shall be paid to him to enable the mortgagor to relief under this section. This provision is similar to that of S. 63 (*a*) of Transfer of Property Act.

Sub-s. 5 : Mortgage and lease back.—When introducing the Bill, the Hon. Minister explained : "In cases where mortgagees had leased back properties and fixed a rent, the High Court had held that those cases would come under the Transfer of Property Act and not the Agriculturists Relief Act. The amendment now suggested would cover such cases." The lease may be to the mortgagor or any other person.

Sub.-s. 6 (*a*) : Rent due to mortgagee is interest.—In cases where property is leased back to the mortgagor, and period of possession is less than 30 years, the rent due under the lease will be deemed as interest on the mortgage debt amenable to the scaling down provisions of Ss. 8 and 9.

Sub.-s. 6 (*b*).—When the mortgagee has been in possession of the property for an aggregate period of 30 years or more, and when the property was leased back to the mortgagor, right is given to the mortgagee to recover the rents due for the period, if they are not time-barred, before the date on which the mortgage is deemed to have discharged. Words "In possession of the property mortgaged" mean "in possession of *all the property* mortgaged," and not merely in possession of substantial portion of the property mortgaged."[52]

Sub.-s. 7 : Exemptions.—Justifying the exclusion of South Canara and North Malabar, the Hon. Minister said that this had been done because the system of mortgage there virtually amounted to lease and the people who would be benefited by the Bill would be landlords and not agriculturists. The Select Committee found that more harm than good would be done by inclusion of the 2 years in the Bill.

The Hon. Minister moved an amendment substituting the expression "*bona fide* and for valuable consideration" for the expression "For valuable consideration" occurring in sub-clause (*ii*) of the new clause. He said that the intention was to exclude cases of persons who had not got the property "*bona fide*" but had brought it as a speculative transaction paying small sums for very valuable property, taking advantage of the poverty of the seller. There are instances of usufructuary mortgages having been allotted in family partitions as the share of some of the partitioning members in these cases, unless such a safeguard is provided, they would lose all their share. The transferee cannot recover more than the consideration of his transfer, but he is entitled to rents not barred, when property is leased back

(52) *Krishna Nambudiri* v. *Narayan Nambudiri*, 56 L.W. 748 : (1943) 2 M.L.J. 642 : 1943 M.W.N. 812 : 1944 M. 124.

to mortgagor. 30th September 1947 has been changed into 30th January 1948, as the latter date is the date of introduction of the Bill. The Minister said that amendment would benefit creditors in that it substituted the date of introduction of the Bill for the date of its publication.

Explanation.—Only when the usufructuary mortgagee is in possession of the property mortgaged, and when no rate of interest is stipulated as due to the mortgagee, the usufructuary mortgage comes within the purview of the section.

Where a mortgage had been renewed under another mortgage including a further sum due under a compromise decree and the new mortgage provided that the mortgagee should take possession of mortgaged property and enjoy the profits in lieu of interest and that another amount which might have to be advanced by mortgagee for the purpose of certain repairs to the irrigation sources should bear interest and was payable as a condition of the redemption of the mortgage, the amount stipulated to be advanced for repairs should be regarded as part of mortgage amount and since it bore interest, the mortgage transaction does not come within the explanation.[53]

Exceptions.

10. (1) The provisions of Ss. 8 and 9 shall not apply to any person who, though an agriculturist as defined in S. 3 (*ii*), did not on the 1st October, 1937, hold an interest in, or a lease or sub-lease of, any land as specified in that section.

(2) Nothing contained in Ss. 8 and 9 shall affect—

[ ] Inserted by S. 7 of Act XXIII of 1948.

(*i*) any mortgage by virtue of which the mortgagee is in possession of the property mortgaged, where no rate of interest is stipulated as due to the mortgagee [except to the extent provided for in Section 9-A], or

(*ii*) any liability for which a charge is provided under S. 55, Cl. 4, sub-cl. (b) of the Transfer of Property Act, or

(*iii*) any liability in respect of any sum due to any public company as defined in the Indian Companies Act, 1913, or to any scheduled bank as defined by S. 2 (*e*) of the Reserve Bank of India Act, 1934, if the interest payable in respect of the liability is not more than nine per cent per annum.

(53) *Satyanarayana* v. *Ramaswamy Naidu,* 59 L.W. 271 : (1946) 1 M.L.J. 129 : 1946 M.W.N. 143 : 1946 M. 305.

NOTES

S. 10.—This section may be compared with S. 4 which also exempts certain debts and liabilities from the operation of the Act. Only Ss. 8 and 9 shall not apply to the liabilities, debts and persons enumerated in this section.

S. 10 (1).—This sub-section operates as a proviso to S. 3 (ii). Relief in respect of debts before the commencement of the Act will be given only to those debtors who were agriculturists on 1-10-1937. A date anterior to the commencement of the Act is fixed to prevent an abuse or evasion of the provisions of the Act, by the debtors and creditors entering into sham transactions.

Sub-S. (2) (*i*).—Usufructuary mortgages where there is no rate of interest provided are exempted under this sub-section.

ILLUSTRATIONS

Usufructuary mortgage and lease back.—(1) Where under a usufructuary mortgage, there is a covenant to pay only the principal, and the mortgagee to enjoy the property for interest and the mortgagee leased back the property on the same day to mortgagor at an annual Purappad (surplus reserved to be payable to the mortgagor) of paddy, though the mortgage and lease back should be taken to form part of the same transaction, effect must be given to each according to its terms and the Court cannot by reading them together spell out a simple mortgage providing for interest at the rate of a particular quantity of paddy per rupee. The annual payment reserved is rent but not interest. Therefore this falls within the category of S. 10 (2) (*i*).[54]

Stipulation as to enjoying usufruct as a penalty and interest—(2) Where in a possessory mortgage stipulating the payment of amount within a prescribed period and in default the mortgagee should retain the right to enjoy the usufruct of the property and should also be entitled to interest at 3 per cent. in addition to the usufruct, the mortgage is one under which a rate of interest is stipulated. It is not saved by this sub-section and it would make no difference whether the rate of interest stipulated might be regarded as a penalty or not.[55]

Usufructuary mortgage in renewal of simple mortgage.—An usufructuary mortgage was executed on 9-1-1926 with possession in lieu of interest, in renewal of an earlier simple mortgage, no rate of interest being stipulated as being payable to the mortgagee. The clause in the mortgage that earlier mortgage should be kept alive, was put in for the benefit of the mortgagee to shield him against intervening mortgages and the plaint was laid on the usufructuary mortgage of 9-1-1926, it comes directly within this sub-section and cannot be scaled down. It cannot be argued that this mortgage was based on the earlier simple mortgage and should be scaled down.[56]

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(54) *Abdul Khader* v. *Subrahmanya Pattar*, 52 L.W. 683: (1940) 2 M.L.J. 760: 1940 M.W.N. 1144: 1940 M. 946.

(55) *Jagannatha Iyengar* v. *Senniveera Chettiar*, 53 L.W. 105: (1941) 1 M.L.J. 197: 1941 M.W.N. 271: 1941 M. 487.

(56) *Rama Ayyar* v. *Madhavarao* (A. No. 87/1939): (1941) 1 M.L.J. (N.R.C.) 36: (1941) M.W.N. (N.R.C.) 37.

S. 10 (2) (*i*).—Where in respect of a single debt several items of property are given as security and the mortgagee is put in possession of some of the items, the mortgagee cannot claim the benefit of S. 10 (2) (*i*).[57]

(3) Where the contemporary lease by mortgagor in favour of mortgagee of a property not covered by the mortgage does not contain a recital that the lessee shall hold the property as security for the debt, but states that lessee shall pay a stipulated rent for the property, it is impossible to read the lease and mortgage as constituting a usufructuary mortgage. Even otherwise, the covenant for payment of interest to mortgagee and the fact that the whole property mortgaged is not handed over to mortgagee would make Sub-s. 2 (1) unapplicable.[58]

Appropriation of rent.—In the absence of contract or express appropriation, all the interest remaining due on 1-10-1937 will be wiped out and the annual rent will have to be adjusted firstly towards interest at the scaled down rate and the balance, if any, towards principal.[59]

Sub-S. 2 (*ii*) : Scope.—The Select Committee proposed to exempt "the liability of a purchaser of immovable property who was in possession of such property to pay the amount of any unpaid purchase money due by him." But the Legislature extended the exemption to cases of liability for which a charge is provided under S. 55 (4) (*b*) of the Transfer of Property Act which is as follows :—"The seller is entitled where the ownership of the property has passed to the buyer before payment of the whole of the purchase money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered." The statutory charge is defeated by a "contract to the contrary" (*vide* S. 55 of the Transfer of Property Act), *i.e.*, by an express or implied contract, or waiver which cannot be inferred from the mere acceptance of additional security,[60] or leaving the purchase money with the vendee for payment to a creditor of the vendor.[61] This sub-section protects any liability in the category of liability in respect of which a charge is provided in the beginning by S. 55 (4) (*b*) and the charge need not be in subsistence.[62]

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(57) *Govindan Nair* v. *Sreenivasa Pattar*, 1949 M.W.N. 81.

(58) *Satyanarayana* v. *Ramaswamy Naidu*, 59 L.W. 271 : (1946) 1 M.L.J. 129 : 1946 M.W.N. 143 : 1946 M. 305.

(59) *Satyalingam* v. *Venkatratnam*, (1947) 2 M.L.J. 385 : 1947 M.W.N. 657.

(60) *Krishnaswami* v. *Vijayaraghava*, (1939) M. 590 ; 49 L.W. 597 : (1939) M.W.N. 284 : (1939) 1 M.L.J. 344.

(61) *Sivasubrahmanya* v. *Subrahmanya*, 39 M. 997 (F.B.) ; *Rama Krishna* v. *Panchamal*, 1939 M. 876 ; 50 L.W. 347 : (1939) 2 M.L.J. 493 : (1939)) M.W.N. 889.

(62) *Varadaraja Perumal Pillai* v. *Palani Muthu*, 52 L.W. 772 ; (1940) 2 M.L.J. 838 : 1940 M.W.N. 1189 : 1941 M. 118.

S. 10 (2) (*ii*) should be read as excluding any liability of the category of liabilities in respect of which a charge is provided under S. 55 (4) (*b*) and the exclusion of liabilities falling within this category would not depend on the subsistence. When once it is established that the liability in question originated solely on the renewal of a previous liability for unpaid purchase money and interest thereon, S. 10 (2) (*i*) protects the liability from the process of scaling down.[63]

Security of other property.—The fact that for purchase money due to the vendor, the vendee gave as security some land other than the land sold, and that the decree sought to be scaled down was passed in a suit to enforce this security can be no ground for holding that the debt does not come under S. 10 (2) (*ii*) and that it can be scaled down.[64]

ILLUSTRATIONS

Mortgage for purchase money.—(1) Where a certain property was sold to vendees for a price and the vendees executed a mortgage for the full amount or price, payable after 5 years and carrying interest from the date of the bond and giving property bought and also other property, the mortgage did not constitute a contract to the contrary so as to exclude the vendor's lien and the liability under the mortgage is one for which a charge is provided under S. 55 (4) (*b*) of the Transfer of Property Act and this sub-section applies, whether or not the charge subsists. " It is true that the mortgage provides additional security and gives five years for payment. But we are not prepared to hold that these terms are necessarily inconsistent with the continuance of the charge.[65]

Pronote for purchase money.—(2) For the price of land purchased *A* executed a pronote in 1931. In 1935 interest amounting to Rs. 900 was due on this pronote. *A* paid Rs. 760 towards that in cash and executed a new subsidiary pronote for the balance of Rs. 140. This sub-section does not apply as this small fragment of the sum is not charged under S. 55 (5) (*b*) of the Transfer of Property Act. The money is not unpaid purchase money and is wiped out as interest outstanding.[66]

Pronote by a purchaser of hypotheca to mortgagee.—(3) When a purchaser of property subject to the mortgage has executed a pronote for the balance of amount due under the mortgage, the liability is not one to the vendor in respect of which a charge is provided by S. 55 (4) (*b*) of the Transfer of Property Act, but the liability is to the mortgagee and can be scaled down.[67]

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(63) *Gopalswamy Muthuraja* v. *Setharama Iyer*, C.R.P. 2100/39, 54 L.W. (S.R.C.) 61 : (1941) 2 M.L.J. (N.R.C.) 59 (1) : 1941 M.W.N. (N.R.C.) 85.

(64) *Athiyappa Gounden* v. *Ramanatha Chettiar*, 51 L.W. 346 : (1941) 1 M.L.J. 367 : 1940 M.W.N. 289 : 1940 M. 420.

(65) *Lakshmana Ayyar* v. *Ramaswami Naicker*, 52 L.W. 733 : (1940) 2 M.L.J. 827 : (1940) M.W.N. 1175 : (1941) M. 119.

(66) (C.R.P. 1852/1939) (1939) 2 M.L.J. (N.R.C.) 93.

(67) *Doraikannu Udayar* v. *Veeraswami Padayachi*, 52 L.W. 582 : (1940) 2 M.L.J. 651 : (1940) M.W.N. 1042 : 1941 M. 59 ; *Venkatammal* v. *Ramaswami* 52 L.W. 697 : (1940) 2 M.L.J. 685 : (1940) M.W.N. 1081 : (1941) M. 62.

Vendee of Hypotheca.—When the vendee of hypotheca is impleaded in the suit on mortgage, his liability is to the decree holder and is not the same as the liability to the mortgagor or in respect of which the vendor's lien subsists. The liability must be scaled down.[68] When a purchaser of property endorses in partial payment of the price a pronote in his name in favour of the vendor and the vendor files the suit against the maker and endorser for recovery of the money due on the note, the liability of the maker is liable to be scaled down under the Act, the liability of the endorser being one in respect of which there was a charge provided under S. 55 (4) (*b*) of the Transfer of Property Act, that liability is excluded from Ss. 8 and 9[69]. The execution of an unregistered agreement of sale and transfer of possession of land to the would-be purchaser on his executing a pronote for the balance of price, would not transfer title to the land to the would-be purchaser, and the fact that he acquires title by adverse possession would not make the debt under pronote a liability for which a charge is provided under S. 55 (4) (*b*) so as to attract the non-liability for scaling down under Sec. 10 (2) (ii).[70]

The endorsee of a pronote.—(4) An endorsee of the pronote executed for the balance of purchase money, can claim the benefit of S. 10 (2) (*ii*). "It is doubtful as we have suggested whether that charge could be enforced by an endorsee of the pronote in the absence of a registered conveyance. But the essential category into which the liability falls is not, in our opinion, affected by assignment of this liability to a third party and it is one which falls into the category referred to in S. 10 (2) (*ii*)."[71]

Seller having no interest in property.—(5) *A* agreed to purchase land from *B*, paid the price and got a sale deed executed. Before registration, *A* agreed to get the land conveyed by *B* to *C*, who executed on that date a pronote to *A* and paid a certain sum in cash. On the same day at the instance of *A*, *B* executed a registered sale deed to *C* and on the following day *C* executed a mortgage to cover the amount of the said promissory note. In 1937 *A* sued on his mortgage and got preliminary and final decrees. On the coming into force of the Act, *C* applied for scaling down. *C*'s liability was not one in respect of which a charge is provided under S. 55 (4) (*b*) of the Transfer of Property Act and hence could not be excluded from scaling down because *A* could not be regarded as the seller, as he had no interest to convey as the contract for sale entered into by *A* does not of itself create any interest in the property.[72]

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(68) *Palanivel Gounden* v. *Subbaraya Gounden*, 54 L.W. 240 : 1941 M.W.N. 804 : 1941 M. 890.

(69) *Rangayya Chettiar* v. *Karim Saheb*, 54 L.W. 310 : (1941) 2 M.L.J. 453 : 1941 M.W.N. 801 : 1941 M. 890.

(70) *Kristam Ragayya* v. *Venkataswami*, A.A.O. 143/45, 59 L.W. (S.R.C.) 53 (ii) 3.

(71) *Varadaraja Perumal Pillai* v. *Palani Muthu*, 52 L.W. 772 : (1940) 2 M.L.J. 838 : (1940) M.W.N. 1189 : (1941) M. 118.

(72) *Egnanarayanayya* v. *Venkatayya*, 52 L.W. 825 : (1940) 2 M.L.J. 920 : (1941) M. 128.

Res judicata.—When a former District Munsif, after hearing the arguments on the question whether a petition under S. 19 would lie having regard to S. 10 (2) (*ii*), passed a considered order that there was no vendor's lien in respect of the liability, it is not open to the successor in office to reopen the issue which had been decided and give a contrary finding and dismiss the application on that finding. The general principle of *res judicata* applies as S. 11, Civil Procedure Code, is not exhaustive.[73]

Sub-s. 2, cl. (*iii*).—Liabilities to public companies, Scheduled Banks are excluded from the operation of scaling down provisions if the interest payable does not exceed 9 per cent. per annum. In moving for the substitution of the clause, the Premier observed: "There are many banks which, though they may be called banks, are lending much to the agriculturists and are earning by way of penalties and otherwise enormous amounts, and there is great complaint among the agriculturist classes that usurious exactions are being made in the name of loan transactions. Therefore, this outer limit has been put down. If the interest charged is more than 9 per cent. it is not an institution which—whatever the form of it may be—deserves our consideration in this regard."

Public Company.—According to S. 2, clause (13) (*a*) of the Indian Companies Act: "The public company means a company incorporated under this Act or the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, which is not a private company," and a private company is defined in S. 2, clause (13) thus :—"Private Company means a Company which by its articles (1) restricts the right to transfer its shares, if any and (2) limits the number of its members to fifty not including persons who are in the employment of the Company, and (3) prohibits any invitation to the public to subscribe for the shares if any, or debentures of the company: Provided that where two or more persons hold one or more shares in a company jointly they shall for the purposes of this definition, be treated as a single member."

A private company has more privileges and is subject to lesser restrictions than a public company under the Act.

A private company which transformed itself into a Public Company under S. 154 of the Indian Companies Act, is a Public Company falling within this sub-section.

Interest.—Interest payable not only means the interest initially payable but also the higher interest payable on default.

ILLUSTRATIONS

(1) *A* borrowed Rs. 1,500 upon a mortgage bond from a Nidhi. The interest stipulated in the bond 6¼ per cent. was payable monthly and the principal was repayable by monthly subscriptions. On default,

(73) *Subramanya* v. *Ramireddi*, 52 L.W. 462: (1940) 2 M.L.J. 499: 1940 M.W.N. 994.

further interest which worked out at more than 9 per cent. was chargeable on both the interest and subscriptions and the excess over principal must be treated as interest and if it works at more than 9 per cent. the debt must be scaled down.[74]

(2) When a public company has obtained a decree on a mortgage providing interest at something under 8% with default rate of 12½% and the later rate has been adopted in the decree, it is not open to the Company to base an argument on the theory that 12½% is not the rate of interest payable but a penal rate which could not be recovered, nor can it be argued that the rate of interest "payable in respect of liability" means rate of subsequent interest on the decree amount.[75]

(3) The liability which is exempted is one under which the debtor is at the time of application indebted. If it is more than 9% and an earlier liability which was renewed and bore a higher rate of interest, *i.e.*, 12% cannot be excluded from S. 10 (2) (ii).[76]

(4) **Sub-S. 2** (*ii*) applies where interest payable is 9% compound as well as simple.[77]

(5) When there was a debt due to a scheduled bank carrying interest at less than 9% which itself was a renewal of pre-existing debt carrying interest at more than 9%, the bank would be entitled to protection. In deciding whether liability is one bearing interest at more than 9% the Court has to look to actual liability sought to be scaled down, and cannot take into consideration any pre-existing liability, which only becomes relevant if and when it has found that provisions of the Act would have to be applied to the debt. Hence where an award made by arbitrator which is renewal of a pre-existing debt to a scheduled bank, carrying interest at more than 9%, ripens into a decree and the liability thereunder carried interest at less than 9%, this liability is not liable to be scaled down as the Bank is entitled to the protection of sub-S. 2 (ii).[78]

Provision as to costs, etc., in certain cases.

11. Where a debt payable by an agriculturist includes any sum decreed as costs by any Court, or sums lawfully expended by a mortgagee or other person in order to preserve the property mortgaged, such sum or sums shall be recoverable in addition to the sum recoverable under the provisions of Ss. 8 and 9.

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(74) *Srinivasachariar* v. *C. H. D. Nidhi, Limited*, 52 L.W. 432 : (1940) 2 M.L.J. 478 : 1940 M.W.N. 993 : 1940 M. 937.

(75) *Nellore Permanent Fund Ltd.* v. *Subba Rao*, 54 L.W. 239 : (1941) 2 M.L.J. 388 : 1941 M.W.N. 784 : 1941 M. 889.

(76) *Subrahmania Iyer* v. *India Equitable Assurance Co., Ltd.*, 54 L.W. 353 : (1941) 2 M.L.J. 509 : 1941 M.W.N. 887 : 1942 M. 105.

(77) *Krishnaswami Vandayar* v. *Union Bank, Ltd.* 55 L.W. 560 : (1942) 2 M.L.J. 346 : 1942 M.W.N. 552 : 1943 M. 10 : 206 I.C. 71.

(78) *Mahabala Holla* v. *Kanara Banking Corporation Ltd.*, 56 L.W. 37 : (1943) 1 M.L.J. 172 : 1943 M.W.N. 52 : 1943 M 270 : 212 I.C. 385.

NOTES

It is quite equitable and proper that a creditor should not be made to lose the expenses actually incurred by him and decreed by the Court and any sums lawfully spent for preservation of the mortgaged property and this section keeps such costs exempt from scaling down.

Interest on Costs.—Section 35 (3), Civil Procedure Code, empowers the Court to award interest on costs also. "We doubt whether this section was intended to safeguard not only the costs but interest thereon, for the section couples costs with sums recoverable as having been lawfully expended by a mortgagee. Such sums would normally be added to the principal amount of the mortgage and would bear interest at the contract rate. If it had been the intention to exclude interest on such sums due to the mortgagee from the scaling down provisions, surely there would have been an express indication of the fact. We are constrained to the view that there was no intention to safeguard the interest on sums due to the mortgagee and if there was no such intention, similarly there can be no intention to exclude from the scaling down provisions interest on any sum decreed as costs."[79] Therefore interest on costs will have to be scaled down under Ss. 8 and 9 as the decree happens to be before or after 1-10-1932.

Compromise decree.—Sections 11 and 19 are applicable to cases where any sum is decreed as costs by Court. Where parties enter into a compromise agreeing that a certain sum should be payable in full satisfaction of the suit claim and costs without allocating any part of the sum specifically to the costs of the suit, the Court has no power to reopen the compromise, tax the costs that would have been awarded if the suit had succeeded after contest and direct its payment when a judgment-debtor applies for scaling down the decree under S. 19. "In the present case though compromise referred to defendant's liability to pay Rs. 2,100 in full satisfaction of the suit claim and costs in another place, it provided that each party shall bear the costs incurred by him. This shows what is usually the case that parties had no definite idea in their minds that any part of that sum represented the liability for costs.[80]

Execution Costs and Poundage.—Sections 11 and 19 relate only to costs as decreed and do not cover costs of execution.[81] They are undoubtedly a principal sum due to the decree-holder as part of the decree. Similarly he is entitled to the poundage.[82]

(79) *Palani Gounden* v. *Muthuswami Gounden*, 52 L.W. 638 : (1940) 2 M.L.J. 707 : (1940) M.W.N. 1128 : (1941) M. 52.
(80) *Syamarao* v. *Hanumantha Rao*, 52 L.W. 403 : (1940) 2 M.L.J. 476 : (1940) M.W.N. 945 : (1940) M. 925 ; *Narayana Chettiar* v. *Ottuveera Gounden*, (C.M.A. 72/39) 52 L.W. (S.R.C.) 58 : (1940) 2 M.L.J. (N.R.C.) 59.
(81) *Venkatammal* v. *Ramaswami Aiyar*, 52 L.W. 607 : (1940) 2 M.L.J. 685 : 1940 M.W.N. 1081 : 1941 M. 62 ; *Narayana Chettiar* v. *Othuveera Gounden*, (C.M.A. 72/39), 52 L.W. (S.R.C.) 58 ; (1940) 2 M.L.J. (N.R.C.) 59.
(82) (C.M.A. 559/38), 53 L.W. (S.R.C.) 5.

S. 11.—The mere silence with respect to liability for costs in execution cannot be taken as a provision of law cancelling such a liability and the judgment-debtor is not entitled to relief in respect of costs of execution except to the extent to be scaled down under S. 8 or 9 as the case may be.[83]

Rate of interest payable by agriculturist on old loans.

12. All debts which have been scaled down under the provisions of this Act shall, so far as any sum remains payable thereunder, carry from the date up to which they have been scaled down interest on the principal amount due on that date at the rate previously applicable under law, custom, contract or otherwise:

Provided that it shall not in any case exceed 6¼ per cent. per annum simple interest, that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest.

NOTES

This section makes provision for further interest on the debts scaled down.

Date from which interest runs.—A debt scaled down under S. 8 (3) carried interest under S. 12 from 1-10-1937, that is, the date mentioned in S. 8 (1).[84] The debts scaled down under S. 8 carry interest from 1-10-1937,[85] whereas debts scaled down under S. 9 carry interest from 22-3-1938, *i.e.*, the date up to which the debt has been scaled down.[86]

S. 12.—Where a decree, dated 23-7-1936 based on an interest bearing debt did not contain any provision for payment of subsequent interest and seven years afterwards an application for scaling down the decree under S. 19 was filed, there is nothing in S. 12 which justifies the imposition of liability for subsequent interest to a interest-free decree which is being scaled down.[87]

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(83) *Venkatapathiya* v. *Sait Anjari Ammal*, 56 L.W. 604 : (1943) 2 M.L.J. 443 : 1943 M.W.N. 633 : 1944 M. 70 : 211 I.C. 420.

(84) *Sevugam Chettiar* v. *Ranganadha Mudaliar*, 52 L.W. 788 : (1940) 2 M.L.J. 870 : 1940 M.W.N. 1222 : 1941 M. 288.

(85) *Veeraraju* v. *Dora Garu*, 52 L.W. 674 : (1940) 2 M.L.J. 758 : 1940 M.W.N. 1138 : 1940 M. 940.

(86) *Contra* decision of *Horwill, J.*, in *Muhammad Sahib* v. *Kunthammal Sowcar*, 52 L.W. 245 : (1940) 2 M.L.J. 185 : 1940 M.W.N. 753 : 1940 M. 807.

(87) *Dharmayya* v. *Enadi Reddi*, A.A.O. 96/45, 60 L.W. (S.R.C.) 7 (2).

Rate of interest payable by agriculturists on new loans.

13. In any proceeding for recovery of a debt, the Court shall scale down all interest due on any debt incurred by an agriculturist after the commencement of this Act, so as not to exceed a sum calculated at 6¼ per cent. per annum, simple interest, that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest:

Provided that the Provincial Government may, by notification in the Official Gazette, alter and fix any other rate of interest from time to time.

Explanation.—For the purposes of this section, the definition of 'agriculturist' in S. 3 (*ii*) shall be read as if—

Amended by S. 8 of Act XXIII of 1948.

(*i*) in Proviso (A) to that section, for the expression "the (two) financial years ending 31st March, 1938," the expression "the (two) financial years ending on the 31st March immediately preceding the date on which the debt is incurred" were substituted; and

(*ii*) in Provisos (B) and (C) to that section, for the expression "the (*four*) half years immediately preceding the 1st October, 1937," the expression "the (*four*) half years ending on the 31st March or the 30th September (whichever is later) immediately preceding the date on which the debt is incurred" were substituted.

NOTES

This section makes provision for interest on debts incurred after the commencement of the Act. A maximum rate of simple interest at 6¼ per cent. per annum is fixed. The Provincial Government is empowered by notification to alter and fix any other rate of interest from time to time. With reference to this section and S. 12, the Select Committee says: "In these clauses, the Committee has fixed the maximum rate of interest on scaled down debts and on new debts at 6¼ per cent. per annum simple interest, instead of 6 per cent per annum simple interest, as that rate corresponds to one pie per rupee per mensem or one anna per rupee per annum and would be more easily understood and adopted in rural areas." All debts referred to in S. 4 including those due to Co-operative Societies, Land Mortgage Banks, etc., are not affected by this S. 13. Banks, Joint Stock Companies, etc.,

referred to in S. 10 (2) (*iii*) are affected by this section, as the exemption afforded to them is only in respect of Ss. 8 and 9.

S. 13 : Old Law.—All debts incurred after the commencement of the Act, whether they be in discharge of prior debts or not will fall only under S. 13 and S. 9 does not apply to a debt incurred after the commencement of the Act in discharge of an antecedent debt incurred before the commencement of the Act. No advantage can be got of the proviso to S. 9 (*i*) in dealing with such debts. Their Lordships observe: "It seems to us that having regard to the scheme of the Act, if it has been the intention of the Legislature to introduce theory of renewal into the scaling down in respect of debts incurred after the Act, some specific provisions would have been made in this behalf. We are of opinion that all debts incurred after commencement of the Act, whether they be in discharge of prior debts or not, will fall only under S. 13."[88] The defendant may of course raise contentions under ordinary law such as failure of consideration or a plea that the suit debt is nothing more an acknowledgment of an antecedent debt, which would justify the Court going into antecedent debt.[89]

Payments under mistake of law.—Suit pronote is dated 11–4–1938 for Rs. 300 carrying interest at 12-3/8%. There was a series of payments of interest expressly appropriated by endorsement. The result was that all the interest at contract rate was paid up to 11–8–1941. Plaintiff sued for principal and interest at contract rate from 11–8–1941. Payments having been made and appropriated to interest at contract rate under mistake of law cannot be got back and reappropriated towards principal so as to make the whole of accrued interest amenable to process contemplated under S. 13.[90]

Debtor can waive the benefits of the Act when he makes payment appropriated at the contract rate. The debtor executed a pronote for Rs. 240 on 9–11–1938 promising to pay interest at 12%. There were two payments towards principal and interest of the note of Rs. 100 on 4–11–1941 and Rs. 150 on 22–7–1943. The creditor gave credit for the payments in the plaint calculating interest at contract rate, and claimed Rs. 160 as due on 7–3–1946. The debtor cannot be deprived of the *benefit* of S. 13 by the unilateral act of the creditor.[91]

Change in Law.—In the explanation (*iii*) to S. 8 added by the Amendment, provision is made to the effect that debts renewed after the commencement of the Act should also be scaled down.

(88) *Thiruvengadatha* v. *Sannappan*, 54 L.W. 229 : (1941) 2 M.L.J. 307 : 1941 M.W.N. 800 : 1941 M. 799 (2).

(89) *Krishnamurthi* v. *Narayana*, 57 L.W. 545 : (1944) 2 M. L.J. 298 : 1944 M.W.N. 647 : 1945 M. 18 : *Suryanarayana* v. *Alwananda Rao*, 58 L.W. 638 : (1945) 2 M.L.J. 565 : 1945 M.L.W. 748 : 1946 M. 111 : 223 I.C. 598 : *Somareddi* v. *Thippareddi*, 61 L.W. 595 : (1948) 2 M.L.J. 282 : 1948 M.W.N. 619.

(90) *Ramalakshmi* v. *Gopalakrishna Rao*, 57, L.W. 550 (2) : (1944) 2 M.L.J. 285 : 1944 M.W.N. 648 : 1945 M. 12.

(91) *Muthiya Thevar* v. *Lakshmana Pandithar*, 61 L.W. 792 : 1948 M.W.N. 765.

Proviso.—In exercise of the powers conferred by the proviso, His Excellency the Governor of Madras has altered the rate of 6¼% per annum simple interest specified in the said section and fixed in lieu thereof "5½%" per annum simple interest.[92] The notification operates from the date of its appearance in the *Gazette* and it is not retrospective.[93]

13-A : Rate of Interest payable by certain persons on debts.—Where a debt is incurred by a person who would be an agriculturist as defined in Section 3 (ii) but for the operation of proviso (B) or proviso (C) to that section, the rate of interest applicable to the debt shall be the rate applicable to it under the law, custom, contract or decree of a Court under which the debt arises or the rate applicable to an agriculturist under Section 13, whichever rate is less.

Rate of interest payable by certain person on debts.

S. 13-A : Scope.—This new section is added to extend the benefit of the lower rate of interest, *i.e.*, 5½% per annum provided in S. 13 to agriculturists who earned a larger income by other professions, and thus became subject to the disqualifications mentioned in provisos B and C to S. 3 (*ii*). Under proviso B, the limit of tax has been raised to Rs. 600 with a view to extend the benefit of the Act to them. Now such agriculturist debtors are given the benefit of paying the rate of interest payable under law, Custom, Contract or decree of Court under which the debt arises or the rate mentioned in S. 13, *i.e.*, 5½% per annum simple interest, whichever is less.

14. Notwithstanding anything contained in S. 3 (*ii*) and subject to the provisions of Ss. 5 and 6, where in a Hindu family, whether divided or undivided, some of the members liable in respect of a family debt are not agriculturists while others are agriculturists, the creditor shall, notwithstanding any law to the contrary, be entitled to proceed—

Separation of share of debts in particular cases.

(*a*) against the non-agriculturist member or members and his or their share of the family property, to the extent only of his or their proportionate share of the debt; and

(*b*) against the agriculturist member or members and his or their share of the family property, to the

(92) *G.O. Ms. No.* 2919, *Development*, dated 7-7-1947, published at p. 632 of *Fort St. George Gazette*, Part I, of date 29-7-47.

(93) *Muthia Thevar* v. *Lakshmana Pandithar*, 61 L.W. 792 : 1948 M.W.N. 765.

extent only of his or their proportionate share of the debt which shall be scaled down in accordance with the provisions of the Act.

NOTES

Scope.—This section lays down the process of scaling down of the family debt when some members of the family are agriculturists and others are not agriculturists, but not to those who follow non-agricultural occupations. The shares of liabilities and reliefs would be on the basis of whether or not the member of the family concerned is an agriculturist.

S. 14 : Scope.—S. 14 is intended to deal with the difficulty of apportioning a liability which was partly scaled down and partly intact to the properties of the family whether undivided or divided. There is no reason why a special process should be applied so far as separate properties of members are concerned. The natural process is that in respect of his separate properties the individual member should claim relief according to his status and without reference to the extent of his share in family properties. The apportionment of joint liability between agriculturists and non-agriculturists is really not a matter arising with respect to personal liability of actual executants. S. 14 is concerned only with liability of family property and the phrase "member or members and his or their share" in section (*b*) must be interpreted as "member or members in respect of his or their share." S. 14 has therefore nothing to do with personal liability of separate property of members of agriculturist family and therefore its operation will not affect the personal liability of members who have actually executed the pronote sought to be scaled down.[94]

Marumakkatayam families.—S. 14 applies to Marumakkatayam families and where a pronote was executed by members of Marumakkatayam Tavazhi for and on behalf of their Tavazhi, the members of the Tavazhi which comes within the definition of "agriculturist" entitled to the benefits of the Act, would be liable only for their portion of the debt from and out of the Tavazhi properties. But the personal liability of executant members is not covered by S. 14.[94]

Meaning of debt.—The term 'debt' in S. 14 must be restricted to debts due from agriculturist and the term 'family debt' means a debt due from the family which is an agriculturist at the commencement of the Act or at least on 1–10–1937.[95]

ILLUSTRATION

Petitioner and his brother were members of a joint family and they executed in 1933 a pronote which was said to be in discharge of a family liability. In 1934 there was partition between brothers and

(94) *Nalamuni* v. *Dakshayaniamma*, (1942) 1 M.L.J. 418 : 1942 M.W.N. 274 : 1942 M. 456.

(95) *Vaidyanatha Iyer* v. *Srinivas Iyer*, 55 L.W. 140 : (1942) 1 M.L.J. 506 : 1942 M.W.N. 186 : 1942 M. 375 (2) : 205 I.C. 377.

the debt in question was allotted to the petitioner. In 1936 the creditor got a decree against both the brothers. Petitioner's brother who was an agriculturist, did not take any action to get his liability scaled down. Petitioner who was admittedly a non-agriculturist claimed that under S. 14 the decree could be executed against him only to the extent of his proportionate share of the debt. The liability of the decree is not a family debt and the petitioner is not entitled to any relief.[96]

Scaling down not restricted to the applicant.—In respect of a joint Hindu family debt, any member of the family can apply to have the debt scaled down. It is the debt as a whole that has got to be scaled down and the scaling down cannot be restricted to the member of the family who applies for the relief.[97] The scheme of the Act has reference to the character of the debtor and not to the character of the property comprised in the security for the debt. The scaling down of the debt in respect of a mortgage covering agricultural and non-agricultural lands, is not merely with respect to agricultural lands but also with respect to non-agricultural property like houses, etc.[98]

No restriction of scaling down to agricultural lands.

Agriculturist and non-argriculturist members.—A joint family debt does not cease to be a family debt simply because some of the members of the family are personally liable for it as having been contracted by them. Because one or more members of the family are non-agriculturists, the family property cannot be split up into individual shares and each individual share cannot be liable for its own share of the debt.

ILLUSTRATION

Where there are two non-agriculturists and five agriculturists, the non-agriculturists are liable for 2/7th of the unscaled amount and the five agriculturists are liable for 5/7th of the scaled down amount.[99]

Liability of agriculturist.—Under S. 14 (*b*) the liability of an agriculturist extends only to his proportionate share in the decree scaled down at his instance.[1]

Husband and Wife.—The husband and wife are joint promisors. So long as her husband is alive, she has no share in the joint family property. S. 14 does not apply to such a case.[2]

(96) *Vaidyanatha Iyer* v. *Srinivas Iyer*, 55 L.W. 140 : (1942) 1 M.L.J. 596 : 1942 M.W.N. 186 : 1942 M. 375 (2) : 205 I.C. 377.

(97) *Subbu Pandaram* v. *Lakshminarayana Chettiar*, 51 L.W. 269 : (1940) 1 M.L.J. 300 : 1940 M.W.N. 283 : 1940 M. 435.

(98) *Ibid.*

(99) *Jagannatha Ayyangar* v. *Suppaiah Chettiar*, 52 L.W. 249 : (1940) 2 M.L.J. 187 : 1940 M.W.N. 754 : 1940 M. 797.

(1) *Seetharamayya* v. *Sreeramaiah*, 52 L.W. 479 (1) : (1940) 2 M.L.J. 1064.

(2) *Thangaprakasathammal* v. *Ramalingam Pillai*, (C.R.P. 1455/39), (1940) 2 M.L.J. (N.R.C.) 58.

CHAPTER III

ARREARS OF RENT

Conditional discharge of arrears of rent due to landholders, etc., etc.

15. (1) All rent payable by an agriculturist to a landholder or an under-tenure holder under the Madras Estates Land Act, 1908, or to a janmi or intermediary under the Malabar Tenancy Act, 1929, which has accrued for the fasli year 1345 and prior faslis and which is outstanding on the date of the commencement of this Act shall be deemed to be discharged whether the rent be due as such or whether a decree has been obtained therefor:

Provided that where the person liable to pay rent (hereinafter in this section referred to as 'tenant') does not, on or before the 30th September, 1939, pay up all arrears of rent accrued in respect of any holding for faslis 1346 and 1347, the arrears of rent for fasli 1345 and prior faslis which were outstanding in respect of the same holding on the date of the commencement of this Act shall be deemed to be discharged only in the same proportion as the rent due for faslis 1346 and 1347, which is paid up by the ryot or tenant bears to the rent due for those two faslis:

Provided further that no tenant shall be entitled to the benefit of this section unless he shall have paid in respect of the holding, the rent due for fasli 1347 on or before the 30th September, 1938.

Explanation.—In cases governed by the Malabar Tenancy Act, 1929, any reference to a fasli year in this Chapter shall be deemed to be a reference to the agricultural year as defined in the Malabar Tenancy Act, 1929, which contains the greater part of the fasli year.

ILLUSTRATIONS

(*a*) A ryot or tenant is in arrear at the commencement of this Act in respect of rent for a particular holding

for fasli 1345 and prior faslis in the sum of Rs. 500 and is in arrear on that date in respect of rent for the same holding for faslis 1346 and 1347, the rent for each fasli being Rs. 100. Within the 30th September, 1938, he pays the rent for fasli 1347, and within 30th September, 1939, he pays the rent for fasli 1346. The arrears of rent of Rs. 500 which were outstanding at the commencement of this Act will be deemed to be discharged.

(*b*) A sum of Rs. 500 representing the arrears of rent in respect of a particular holding for fasli 1345 and prior faslis and the rents for faslis 1346 and 1347 for that holding are in arrear and outstanding at the commencement of this Act, the rent for each fasli being Rs. 100. The ryot or tenant pays the landholder within 30th September, 1938, the rent for fasli 1347 but fails to pay within the 30th September, 1939, any portion of the rent for fasli 1346. Only a sum of Rs. 250 or one half of the rent of faslis prior to an inclusive of fasli 1345 will be deemed to be discharged.

(*c*) In the same case, the ryot or tenant does not pay the landholder within the 30th September, 1938, the whole of the rent for fasli 1347. No portion of the arrears for fasli 1345 and prior faslis is discharged and the ryot loses the benefit of this section.

(*d*) In the same case, the ryot or tenant pays the landholder within 30th September, 1938, the rent for fasli 1347, but pays within 30th September, 1939, only Rs. 50, being half the rent for fasli 1346. He has thus paid Rs. 150 out of Rs. 200 being the rent of both the faslis 1346 and 1347, before 30th September, 1939. A sum of Rs. 375 or three-fourths of the rent of faslis prior to and inclusive of fasli 1345 will be allowed to be discharged.

(2) Nothing contained in sub-S. (1) shall be deemed to effect a discharge of arrears of rent which accrued due for fasli 1345, if proceedings for the recovery of such arrears stood stayed by an Act of the Legislature or by an order of a Court or if such proceedings, if instituted, would have stood so stayed. But the arrears of

rent for fasli 1345 shall not be recoverable until the 30th September, 1938, or if the rent for fasli 1347 is paid before that date, until the 30th September, 1939.

(3) Notwithstanding anything to the contrary in any agreement or in S. 64 of the Madras Estates Land Act, 1908, any payment of rent made by a tenant after the commencement of this Act shall be credited towards the rent due by him for fasli 1347 in the first instance, and for fasli 1346 in the next instance, and not towards the rent due for any previous fasli.

(4) Every tenant shall be at liberty to pay into Court any amount towards the rent due or claimed to be due by him for faslis 1347 or 1346 or both and thereupon the Court shall, after notice to the land-holder, under-tenure holder, janmi, or intermediary, as the case may be, apply the provisions of this Act and determine whether the whole or only a portion of the rent for the faslis aforesaid has been paid by the tenant, and also the extent of the remaining liability, if any, of the tenant for rent under the provisions of this Act.

Explanation.—For the purposes of this sub-section, 'Court' shall mean the Collector referred to in S. 209 (1) of the Madras Estates Land Act, 1908, or the Court referred to in S. 3 (*b*) of the Malabar Tenancy Act, 1929, as the case may be.

NOTES

This section deals with wiping off of arrears of rent due to land-holders, janmis and intermediaries. It is only where after paying the rent for fasli 1347 on or before 30–9–1938, the tenant pays also the rent for fasli 1346 on or before 30–9–1939, that he obtains full discharge in respect of all arrears of rent accrued for fasli 1345 and previous faslis. If having paid the rent for fasli 1347 on or before 30–9–1938, he makes default in payment of the rent for fasli 1346 on or before 30–9–1939, or pays only a portion of such rent on or before that date, he gets relief in respect of arrears for prior faslis only in proportion to the share of rent for faslis 1346 and 1347 paid by him. This provision is made to act as an incentive to the tenants who would get the benefit of scaling down to promptly pay up their dues.

Sub-sections 2 and 3.—With reference to these sub-sections, the Select Committee has observed as follows: "The Committee has provided that any payment of rent made after the commencement of

the Act shall be credited first towards rent due by him for fasli 1347 and then towards the rent due for fasli 1346 and not towards any rent due for any prior fasli." A provision has also been made to enable the tenant to deposit the arrears of rent into Court and to ask the Court to abrogate his liability for the arrears of rent for previous faslis or to fix the extent of his liability under the provisions of the Bill.

The rent for fasli 1347 to be paid before 30-9-1938.—A tenant who owed no rent for fasli 1345 or any prior fasli was on 3-12-1938, in arrears for faslis 1346 to 1347 on that date he made a payment declaring it to be in respect of fasli 1346. The landholder sought to bring the property to sale in respect of fasli 1347. As the petitioner tenant had not paid rent on or before 30-9-1938, his contention that that rent should be credited to fasli 1347 under sub-S. (3) is untenable, as sub-S. (3) is subject to sub-S. (1) of S. 15.[3]

Subsisting tenancy.—This section does not apply unless there is a subsisting tenancy on the date of the Act. "The first proviso indicates that here the Act is concerned with a continuing tenancy, but it seems to me that the matter is put beyond doubt by the second proviso which states, that a tenant shall not be entitled to the benefit of S. 15 unless he shall have paid the rent in respect of his holding for fasli 1347." Tenancy in fasli 1347 is a condition precedent to relief under section.[4]

Rent payable by an agriculturist.—In order that S. 15 may apply the rent must be due from an agriculturist at the commencement of the Act.[5]

ILLUSTRATION

An agriculturist who obtained in June, 1938, *i.e.*, after the commencement of the Act, an assignment of land on which rent was due from a tenant who is not an agriculturist within the meaning of the Act, is not entitled to the benefit of S. 15, because at the commencement of the Act, there was no rent payable by an agriculturist. The mere fact that the lands had been assigned, after the Act came into force, to an agriculturist cannot give the latter the benefit of S. 15.[6]

Relationship of landlord and tenant.—The relationship of landlord and tenant is essential in order to attract the provisions of S. 15.

ILLUSTRATION

Major and Minor Inamdars.—The relationship between major and minor Inamdars is that that of landlord and tenant so as to invoke

(3) *Narasimha Nayanim* v. *Venkatarao Naidu*, 50 L.W. 800 : (1939) 2 M.L.J. 791 : 1939 M.W.N. 1208 : 1940 M. 235.

(4) *Pachiappa Chettiar* v. *Vazhuka Chetti*, 53 L.W. 287 : (1941) 1 M.L.J. 333 : 1941 M.W.N. 241 (F.B.).

(5) *Amad Koya* v. *Appu*, 52 L.W. 849 : (1940) 2 M.L.J. 935 : 1941 M.W.N. 33 : 1941 M. 201 : 193 I.C. 406.

(6) *Parameswara Aiyar* v. *Narayana Nambudri*, 53 L.W. 104 : (1941) 1 M.L.J. 177 : 1941 M.W.N. 186 (1) : 1941 M. 432.

the aid of S. 15 in respect of the amount claimed by the former against the latter for water charges, land cess, etc., paid to the Government.[7]

Tenant acquiring landlord's interest.—A Malabar tenant who is in arrears of rent for fasli prior to fasli 1346 and who himself acquired the landlord's interest towards the end of fasli 1347 can under S. 15 obtain remission of the rent for earlier faslis by paying merely proportionate rent for fasli 1347 for the period before he became the landlord.[8]

Rent need not be payable under "Madras Estates Land Act."—The words "Madras Estates Land Act" in sub-S. (1) qualify the landholder and not "payable". So the rent need not be payable under the former Act.[9]

ILLUSTRATION

Poruppu.—Poruppu payable by a whole inamdar to a landholder as such attracts the applicability of S. 15.[10]

Co-tenant: Non-agriculturist.—There is no reason why an agriculturist tenant should not get the benefit of S. 15 merely because there is a co-tenant who is not an agriculturist.[8]

Melcharthdar.—If the landlord is a melcharthdar, he is not a janmi, or the intermediary and the rent cannot be scaled down against him.[10]

Tarwad.—Where in respect of a Kanom containing a provision that in case of default of payment of rent the janmi could adjust the arrears of rent with interest thereon to Kanom and claiming to redeem the Kanom on the payment of balance, though at the time of the suit, the Kanom right was held by the Tarwad of the defendants admitted paying more than Rs. 500 as land revenue, there was subsequently a partition in that Tarwad under which that right was assigned to a Tavazhi paying less than Rs. 500 as land revenue. The Tavazhi is certainly under a liability to pay the rent such as would be entitled to claim benefits of S. 15. The contention that to apply this section would amount to a repeal of S. 24 of the Malabar Tenancy Act is not sustainable.[11] The arrears of rent must be outstanding as rent payable to landlord on the date of the commencement of Act.

Assignee of rent.—Section 15 does not apply to a claim for rent by an assignee from landlord of rent for a particular period.[12]

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(7) *Madura Devasthanam* v. *Masanam Pillai*, 51 L.W. 322: (1940) 1 M.L.J. 369: 1940 M.W.N. 300: 1940 M. 422.

(8) (C.R.P. 769/1939), 52 L.W. (S.R.C.) 69.

(9) (C.R.P. 1941/1939), 53 L.W. (S.R.C.) 72: 1941 M.W.N. (N.R.C.) 51.

(10) *Kalliani* v. *Kanaran*, 53 L.W. 361: 1941 M.W.N. 239 (1).

(11) *Soolapani Moopil Variar* v. *Vettil Veloor*, 52 L.W. 676: (1940) 2 M.L.J. 788: 1941 M. 196.

(12) (C.R.P. 987/1939), 52 L.W. (S.R.C

ILLUSTRATION

A suit was brought by 1st plaintiff as assignee of rent for the period from 1929–1930 to 1936–1937, his assignor being the 2nd plaintiff the janmi. The assignment was dated 17–2–1937 and there was a decree, dated 9–10–1939 in favour of the 1st plaintiff. Defendant sought relief under S. 15. As arrears could not be said to be outstanding as rent payable to a janmi or intermediary on the date of commencement of the Act, the defendant is not entitled to the benefits of S. 15. The term janmi or intermediary in S. 15 could not be read as including an assignee of the right to collect rent.[13]

Alienee of tenant's interest.—The alienee of the holder of the tenant's interest in a portion of his holding is a person who is liable to pay rent in respect of that portion and provided that he is an agriculturist, he is entitled to deposit the arrears of the holding and obtain benefits of S. 15.[14]

Assignee of Kanom.—An assignee of part of the properties devised in Kanom is entitled to claim benefits of S. 15 in respect of arrears of michavaram due to the janmi.[15]

Deposit.—The deposit must be arrears of the rent and need not include any arrear of land revenue paid by the landholder. The deposit should include arrears of Government revenue by Kanomdar in respect of fasli 1345, etc.[16]

Simple Mortgagee of Tenant.—Simple mortgagee of tenant is not entitled to benefits under S. 15.

ILLUSTRATIONS

(1) A tenant's mortgagee with possession of demised property cannot be deemed to be a tenant liable to pay rent to janmi and there is no privity of estate or contract between the mortgagee and janmi. Where a deposit of michavaram for fasli 1346 was made merely to safeguard the interest of mortgagee and not on behalf of tenant, the mortgagee is not entitled to claim relief under S. 15.[17]

(2) A simple mortgagee from a ryot against whom a decree has been passed for rent is not a judgment-debtor in the rent suit in which he has not been impleaded, at any rate in a case in which the mortgage was not subsequent to the decree. It is doubtful whether a

(13) *Amad Koya* v. *Appu*, 52 L.W. 849 : (1940) 2 M.L.J. 935 : 1941 M.W.N 33 : 1941 M. 201 : 193 I.C. 406.

(14) *Itteeri Nambudri* v. *Sankunni Nair*, 52 L.W. 737 : (1940) 2 M.L.J. 820 : 1940 M.W.N. 1177 : 1941 M. 303; *Puthan Veettil Cheeru* v. *Chattu Nambiar*, 52 L.W. 391 : (1940) 1 M.L.J. 451 : 1940 M.W.N. 935 : 1941 M. 44.

(15) *Manakkal* v. *Kayyumma*, 53 L.W. 151 : (1941) 1 M.L.J. 220 : 1941, M.W.N. 174 : 1941 M. 486.

(16) *Itteeri Nambudri* v. *Sankunni Nair*, 52 L.W. 737 : (1940) 2 M.L.J. 820 : 1940 M.W.N. 1177 : 1941 M. 303.

(17) *Krishna Menon* v. *Raman*, (C.R.P. 1730/39), (1940) 2 M.L.J. (N.R.C.) 76.

simple mortgagee from a tenant would be entitled to the benefits of S. 15.[18]

Pronote for arrears of rent.—A pronote for rent is liable to be scaled down as a debt under S. 8 or 9 as the case may be but not as rent under S. 15. By taking a pronote the character of liability is changed and it ceases to be rent. The debtor cannot compel the promisee to treat his claim as one for rent nor can he treat the liability as being without consideration on the ground that the claiming of rent would be met by defence under S. 15.[19]

ILLUSTRATIONS

(1) Certain tenants had executed a pronote for arrears of rent for fasli 1345 and prior faslis on which a decree had been obtained. Even if the promissory note may be regarded as merely conditional payment., the payee's rights cannot in any way be affected. No rent could be deemed to be outstanding and S. 15 cannot apply.[20]

(2) Where *A* executed a pronote on 11-2-1936 for rent due for fasli 1345 and prior faslis and *B* an endorsee of the pronote got a decree thereon on 20-9-1937. The decree is not a decree for rent but a decree for a debt as it purports to be and would not fall under S. 15 but under Ss. 9 and 19.[21]

Purappad.—The surplus reserved as payable to the mortgagor (Purappad) under a possessory mortgage (Kaivaram) after appropriating part of the usufruct in lieu of the interest due on the mortgage money is not rent within S. 3 (*iv*) so as to attract the application of S. 15.[22]

Panya Kychits.—Section 15 does not apply to cases where persons are indebted under what are known as Panya Kychits wherein the general tenor is to refer to a mortgage of land on which a theoretical rent is fixed and out of that rent part goes towards the discharge of the interest on the mortgage, part towards the assessment and the balance is payable to the mortgagor and where there is also a clause to the effect that if the mortgagor comes to redeem the mortgage, he would be entitled to deduct the arrears of this so-called rent, as it is a contractual payment under the mortgage but not rent.[23]

Melpanayamdar.—The Melpanayam deed in so far as arrears of rent under Panya Kychits are concerned is an assignment. The

(18) (C.R.P. 153/39), 1941 M.W.N. (N.R.C.) 46.
(19) *Venkateswararao* v. *Lakshmikantarao*, (1941) 1 M.L.J. 633 : 1941 M.W.N. 454.
(20) (C.R.Ps. 2581 and 2582/1939), 51 L.W. (S.R.C.) 4.
(21) *Ramadas Reddiar* v. *Munuswami Reddiar*, 52 L.W. 735 : (1940) 2 M.L.J. 825 : 1940 M.W.N. 1155 : 1941 M. 116.
(22) *Vasudeva Nambudri* v. *Raman Nambudri*, 52 L.W. 639 : (1940) 2 M.L.J. 712 : 1940 M.W.N. 1126 : 1940 M. 939.
(23) *Valiaraja* v. *Kochayissa*, (C.R.Ps. 840 to 850/39), 53 L.W. (S.R.C.) 60 : (1941) 1 M.L.J. (N.R.C.) 60 : 1941 M.W.N. (N.R.C.) 50 (2).

Melpanayamdar is not a jenmi or intermediary according to S. 33-J of the Malabar Tenancy Act.[24]

Deposit by purchaser of a defined portion of Agraharam.—Where there is a joint and several liability of Agraharamdars to pay Kattubadi and a purchaser of a defined portion of the agraharam is also joined as a party to the suit and a decree joint and several in imposing the liability for the whole of arrears on all the defendants is obtained, if the purchaser wants to get his liability scaled down he must deposit two faslis' rent for the whole holding for the arrears of which he has been made jointly and severally liable.[25]

Rent decree.—Rent includes rent due under a decree also. Where there is a decree for rent against a tenant, he is not entitled to the benefit of S. 15 but to the benefits of Ss. 8 and 9 so far as interest on costs is concerned.[26] Where there is a decree of Civil Court in respect of the rent payable to the landholder for the relevant period (Fasli 1345 and prior faslis), there is no room for an application to the Revenue Court under S. 15 (4). A procedure analogous to S. 19 should be followed in respect of such a decree. The object of S. 15 (4) is to enable a tenant whose liability has not yet come into Court to ascertain what is the extent of liability as scaled down and pay it in order to prevent an unnecessary suit. Under the guise of a scaling down application under S. 15, the tenant judgment-debtor cannot circumvent the decree passed by Civil Court. He must first apply under S. 19 to the Court which passed the decree and after getting the decree amended only he can get relief under S. 15 (4) by the application to the Revenue Court.[27]

Rate of rent determined cannot be altered.—When there is a decree for fixing the rates of rent for faslis 1343 to 1345, the Deputy Collector is not justified in ignoring those rates and determining the rent under S. 15 (4) on the basis that the neglect of irrigation works authorises the Court to reduce the rates without a proper application in that behalf.[28]

Explanation to sub-S. (4).—The application must be made to the same Court where the landlord has to sue for rent or possession against the tenant.

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(24) *Kumaran* v. *Kunhini Nair*, (C.R.Ps. 1871 and 1872/39), (1941) 1 M.L.J. (N.R.C.) 60 : (C.R.P. 987/1939), 52 L.W. (S.R.C.) 31.

(25) *Ramamurti* v. *Jagaddeva Raja Bahadur*, (C.R.P. 2169/1939), (1941) 1 M.L.J. (N.R.C.) 51 : 1941 M.W.N. (N.R.C.) 50 (1).

(26) *Venkataratnam* v. *Suryanarayana Rao*, 53 L.W. 86 : (1941) 1 M.L.J. 156 : 1941 M.W.N. 96 : 1941 M. 500.

(27) *Venkataraja Gopala Krishnayachendra Bahadur* v. *Venkata Seshacharlu*, (C.R.P. 1705/1939), 53 L.W. (S.R.C.) 64 : (1941) 1 M.L.J. (N.R.C.) 53 : 1941 M.W.N. (N.R.C.) 48 : *Sobhanadri Apparao* v. *Venkatappayyarao*, (C.R.P. 2042/40), 53 L.W. (S.R.C.) 60 : (1941) 1 M.L.J. (N.R.C.) 54 : 1941 M.W.N. (N.R.C.) 52 (2); *Sivanarayana* v. *Satyanarayana*, (C.R.P. 2253/1939), (1941) 1 M.L.J. (N.R.C.) 66 : 1941 M.W.N. (N.R.C.) 55.

(28) (C.R.P. 580/1939), 53 L.W. (S.R.C.) 77.

ILLUSTRATION

When the landlord would have clearly no claim of possession by redeeming a Kanom, he would have to go to the Court of a Subordinate Judge, and the tenant applying for benefits under S. 15 (4) also go to the Subordinate Judge.[29]

Landholder to be entitled to recover land cess and costs.

16. Notwithstanding anything contained in this chapter, a landholder or an under-tenure-holder under the Madras Estates Land Act, 1908, or a janmi or intermediary, under the Malabar Tenancy Act, 1929, shall be entitled to recover, in addition to any sum recoverable by him under section 15—

(*a*) the land cess, if any, paid by him and recoverable under S. 88 of the Madras Local Boards Act, 1920;

(*b*) the land revenue and water cess, if any, paid by him to the Provincial Government which the tenant was bound to pay by virtue of any law, custom, contract or decree of Court governing the tenancy; and

(*c*) the costs awarded to him in any decree for rent obtained by him.

NOTES

With reference to S. 16 the observation of the Select Committee is as follows:—" The Committee has also provided that where a landholder has paid the tenant's share of the land cess under the *Madras Local Boards Act, 1920*, he would be entitled to recover the same. It has also provided that in cases where a landholder has already obtained a decree against his tenant for the rent due to him for fasli 1345 and prior faslis, he can recover the whole of the costs awarded to him by such decree."

The land cess, land revenue and water cess are exempted from the scaling down because they do not constitute " rent " within the meaning of the Madras Estates Land Act or Malabar Tenancy Act. When the ryot uses, for the cultivation of a land in his holding, water from a Government tank and for the use of such water so taken the Government recovers an amount as and by way of water cess from the landholder, the claim of the landholder to recover such amount from the ryot is not a claim for rent as it is difficult to see now what does not really go into the landlord's pocket is rent.[30]

(29) *Appukutta Menon* v. *Nambudripad*, (C.R.P. 2551/1939), 53 L.W. (S.R.C.) 6: (1941) 1 M.L.J. (N.R.C.) 7.

(30) *Doraiswamy Gurukkal* v. *Subramania Gurukkal*, 1928 M. 419 : 51 M. 266 27 L.W. 376 : 54 M.L.J. 361 (F.B.).

The burden of proving a custom or contract, express or implied, negativing the right of the landholder to recover land revenue cess or water rate is on the tenant.[31]

Section 3 (iv).—S. 3 (*iv*) excludes costs from the definition of rent and therefore they are recoverable as such without any scaling down.

Extension of limitation for suits, etc., for rent in certain cases.

17. Notwithstanding anything contained in the Madras Estates Land Act, 1908, or the Malabar Tenancy Act, 1929, or in any law of limitation or procedure in force for the time being, no suit or execution proceedings in respect of arrears of rent accrued for fasli 1345 or any prior fasli which, under the existing law, would become barred between the 1st October, 1937 and the 30th September, 1938, shall be so barred and the landholder, under-tenure-holder, janmi or intermediary, as the case may be, shall be entitled to file a suit or institute execution proceedings for recovery thereof, on or before the 31st December, 1938; and in cases where the rent due for fasli 1347 has been paid before the 30th September, 1938, the period of limitation for any suit or execution proceedings for the recovery of any arrears of rent which, under the existing law, would become barred between the 1st October, 1937 and the 30th September, 1939, shall stand extended until the 31st December, 1939:

Provided that where on the 31st December, 1938, or the 31st December, 1939, as the case may be, an application under sub-S. (4) of S. 15 is pending in any Court, the period of limitation prescribed by this section shall stand extended until the expiry of a period of two months from the date of the order on such application.

NOTES

With regard to this section the Select Committee has observed as follows:—The Committee has provided that the period of limitation for suits for the recovery of rent for fasli 1345 and prior faslis should be extended by three months from the dates allowed for payment of the rents for the rents for faslis 1347 and 1346, as those dates would determine the tenant's liability for such arrears.

(31) *Midnapore Zamindari Co., Ltd.* v. *Muthappudayam*, 40 M.L.J. 213: 1921 M. 195.

S. 17.—The phrase " decree in respect of arrears of rent " in S. 17 would in its ordinary connotation include costs incidental to such a decree whereby reason of operation of S. 15 and deposit made thereunder though nothing was left due but the costs, the decree for costs can be executed. When the actual rent included in the decree became unrealisable by operation of the statute the balance due for costs must still be regarded as part of the decree in respect of arrears of rent, the execution of which will be saved by S. 17 from the bar of limitation under S. 48, C.P.C., and Act 182, Limitation Act.[32]

Scaling down of interest on arrears of rent.

S. 17-A.—In any suit or proceeding before a Civil or Revenue Court involving a claim for arrears of rent payable by an agriculturist, including a claim to set off such arrears, whatever be the period to which the arrears relate, the Court shall scale down all interest, if any, due on such arrears so as not to exceed a sum calculated at 5½ per cent. per annum simple interest, notwithstanding anything to the contrary contained in any contract or custom:

Provided that the Provincial Government may, by notification in the Official Gazette, alter and fix any other rate of interest from time to time. (*Fort St. George Gazette*, Part IV B, pp. 47 & 48, dated 23rd March 1949.

Explanation.—For the purposes of this section, the definition of " agriculturist " in Section 3 (ii) shall be read as if—

(i) in proviso (A) to that Section, for the expression ' financial years ending 31st March, 1938,' the expression ' financial years ending on the 31st March immediately preceding the date of institution of the suit or proceeding ' were substituted ; and

(ii) In provisos (B) and (C) to that section, for the words and figures " immediately preceding the 1st October, 1937 ", the words and figures " ending on the 31st March or the 30th September (whichever is later) immediately preceding the date of institution of the suit or proceeding " were substituted.

This section was inserted with a view to scale down the interest, on arrears of rent. As the definition of " debt " in S. 3 does not include rent as defined in the Madras Estates Land Act, 1908, or in the Malabar Tenancy Act, 1929, the interest on arrears of rents due from an agriculturist cannot be scaled down under the existing Act. It is felt necessary to include the present specific provision for this purpose, as agriculturists are still burdened with heavy debts and cannot clear off their debts unless some more help is given to them.

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(32) *Sankaran Nair* v. *Govindan Nair*, A. A. O. 146/44, (1945) 1 M.L.J. (N. R. C.) 3 (2).

In a line with S. 13, interest on arrears of rent will be reduced to 5½% per annum, simple interest.

Explanation.—The periods of time of assessment of the taxes under provisos A to C of S. 3-(*ii*) have been altered and fixed as immediately preceding the date of institution of the suit or proceeding.

In the case of certain debtors who would be agriculturists but for the operation of provisos B and C, a provision is made under S. 13-A regulating the rate of interest payable on the debts of such persons as 5½% per annum which is applicable under S. 13, or the rate applicable under the decree, contract or custom, etc., whichever rate is less. No such benefit is given concerning interest on arrears of rent payable by such category of persons who would be agriculturists but for the operation of provisos B & C read in the altered context noted above.

Amendment is retrospective.—By section 3 of the Amending Act V of 1949, retrospective effect is given to S. 17-A.

S. 3 : Amendment made by S. 2 to have retrospective effect.—The amendment made by this Act shall apply to—

(i) All suits and proceedings instituted after the commencement of this Act ;

(ii) All suits and proceedings instituted before the commencement of this Act, in which no decree or order has been passed, or in which the decree or order passed has not become final, before such commencement ; and

(iii) All suits and proceedings in which the decree or order passed has not been executed or satisfied in full before the commencement of this Act.

Provided that no creditor shall be required to refund any sum which has been paid to or realised by him, before the commencement of this Act.

CHAPTER IV

Procedure and Miscellaneous

Provision as to costs in certain cases.

18. (1) Where a decree is passed against an agriculturist in a suit filed on or after the 1st October, 1937, the Court shall allow only such costs as would have been allowable if the suit had been filed for the amount of the debt as scaled down in accordance with the provisions of this Act, and where in any case a decree has been passed before the commencement of this Act, the Court shall, on application by the agriculturist, amend the decree accordingly.

(2) Nothing in sub-S. (1) shall apply to any suit instituted on or after the 1st October, 1937 and before the commencement of this Act in respect of a claim which would be barred by limitation before the 1st April, 1938.

NOTES

The Statement of Objects and Reasons mentions: "Numerous complaints have been received that owing to the expectation of Legislation on these lines, creditors have had recourse to coercive processes causing great distress among agriculturists, and it is therefore proposed to give the benefit of the measure to debtors proceeded against since 1-10-1937."

Sub-section 1.—The sub-S. 1 applies to suits filed on or after 1-10-1937 and were pending disposal on the date of commencement of the Act. The Court has a duty to award proportionate costs as the debt has to be scaled down under Ss. 8 and 9. When a suit is filed before 1-10-1937, S. 18 (1) does not apply and full costs should be provided for.[33] Where a decree has already been passed before the commencement of the Act, the Court shall amend it by awarding proportionate costs on the scaled down amount. But an agriculturist must make an application for amendment of the decree to get the benefit of this section.

Sub-section 2.—Where a suit has been filed after 1-10-1937 and before 22-3-1938 on the basis of a claim that would be barred by

(33) *Neelappa Reddiar* v. *Solaimuthu Udayar*, 52 L.W. 500: (1940) 2 M.L.J. 507: 1940 M.W.N. 1007: 1941 M. 58.

limitation before 1-4-1938, full costs shall be granted because the suit cannot be considered to be a coercive proceeding.

Limitation.—No time is fixed in the Act within which an application under S. 18 has to be made. In such a case the residuary Art. 181 of the Indian Limitation Act applies. An application must be made within three years from the date when the right to apply accrues, *i.e.*, the date of the commencement of the Act (22-3-1938).

Amendment of certain decrees.

19. (1) Where before the commencement of this Act, a Court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist or in respect of a Hindu joint family debt, on the application of any member of the family whether or not he is the judgment-debtor or on the application of the decree-holder, apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly or enter satisfaction, as the case may be:

Provided that all payments made or amounts recovered, whether before or after the commencement of this Act, in respect of any such decree shall first be applied in payment of all costs as are originally decreed to the creditor.

Added by S. 10 of Act XXIII of 1948.

(2) The provisions of sub. S.-(1) shall also apply to cases where, after the commencement of the Act, a Court has passed a decree for the repayment of a debt payable at such commencement.

This section prescribes the procedure for making an application for scaling down.

Procedure. The application has to be made to the Court which passed the decree. Ss. 19 and 20 should be read together. The explanation in S. 20 that the expression "the Court which passed the decree" shall have the same meaning as in the Code of Civil Procedure, 1908, equally applies to S. 19. Hence even in a case where a decree is confirmed or modified by appellate Court, application to scale down has to be filed before the Court of the first instance, *i.e.*, trial Court.[34]

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(34) *Gangaraju* v. *Bulli Ramayya*, 49 L.W. 303: (1939) 1 M.L.J. 329: 1939 M.W.N. 164: 1939 M. 483: I.L.R. 1939 M. 520: 183 I.C. 596; *Periaswami Chettiar* v. *Ramaswami Gounden*, 52 L.W. 481: (1940) 2 M.L.J. 513: 1940 M.W.N. 1010: 1941 M. 113.

ILLUSTRATIONS

(1) A suit was dismissed before the Act came into force. There was an appeal and the appellate Court reserved the right of the defendant to apply to the lower Court to scale down. The appeal decision was after the Act came into force. The decree did not mention this reservation nor any formal application was made therefor. In a case like this when liability is declared by an appellate Court's decree for the first time and a plea is open to the defendant under the Act, there should be a written application raising this plea before the appellate Court and the appellate Court should either give its own decision or reserve in its decree the right to have the matter decided by the Court below. Application should be made to the appellate Court to have the decree brought in accordance with the judgment.[35]

S. 19.—Where pending an application for scaling down a decree debt after the sale in execution had taken place, the debtor deposited the decree amount under O. 21, r. 89 of C.P.C., to get the sale set aside, and ultimately as the result of scaling down the decree debt is wiped out, satisfaction can be entered up, and deposit returned to the debtor. So long as the decree continued to subsist, the debtor is entitled to apply for relief under the Act, except in circumstances contemplated in S. 20 and the mere failure to apply for scaling down decree earlier cannot be deemed as a waiver of his right.[36] Though proceedings under S. 19 involve the reopening of the decree to the extent laid down in Act, there is nothing in that section which permits the Court to go into the matters concluded in the trial of the suit, except to the extent necessary to calculate the liability as scaled down on the basis of facts proved. A partial failure of consideration for suit mortgage which was not put forward as defence to the suit cannot be allowed to be urged in proceedings under S. 19 in order to establish a right to a greater relief under that section, since that question must be considered to have been concluded by the judgment.[37]

No alternative remedy under S. 47, C. P. Code.—The only procedure in respect of decrees before the Act is by S. 19 and no alternative remedy under S. 47 is available in cases where S. 19 has no application.[38]

(2) **Pecuniary limitation.**—It is the Court which passed the decree that has jurisdiction to amend it. This rule applies even if the Small Cause Court which passed the decree has a lower pecuniary jurisdiction at the time of scaling down petition than it had at the time of the decree. The jurisdiction is conferred solely by S. 19 which does not impose any pecuniary limitations.[39]

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(35) *Kannabhiran Pillai* v. *Govindaswami Pillai*, 52 L.W. 413: (1940) 2 M.L.J. 473: 1940 M.W.N. 947: 1940 M. 959.

(36) *Krishnan Chettiar* v. *Nachimuthu Gounder*, 55 L.W. 260: (1942) 1 M.L.J. 500: 1942 M.W.N. 333.

(37) *Nagaraju* v. *Mangayya*, C.R.P. 2057/39, 55 L.W. (S.R.C.) 5 (1) (*a*).

(38) *Santhappa* v. *Sowrappa*, (C.M.A.) (424/40), 53 L.W. (S.R.C.) 62: (1941) 1 M.L.J. (N.R.C.) 57: 1941 M.W.N. (N.R.C.) 48 (2).

(39) *Gnanayutha Nadar* v. *Ponnuswami Nadar*, (C.R.P. 707/39), (1940) 2 M.L.J. (N.R.C.) 23.

(3) The Court hearing an appeal from a decision in a suit where the plaintiff seeks to escape his liability from a decree of another Court, has no jurisdiction to scale down the decree which is being attacked at the instance of the plaintiff.[40]

Duty of Court.—Even in a Small Cause suit where there is a contention raised under the Act, the Judge ought to deal with it and give a decision as to the correctness of the figure mentioned in the decree as the amount of the debt due, giving the reasons therefor.[41]

The Court under S. 19 had no jurisdiction to reduce the principal of a decree except on the grounds laid down under the Act and there is nothing in the Act which would justify the reduction of such debt merely on the basis that the decree did not give effect to a contention which might have been but was not raised.[42]

The extent of Court's powers in amending a decree is narrowly defined and it cannot be extended to correction of decrees which appear to be erroneous in other respects.[43]

When the debtor should be an agriculturist.—For the applicability of the benefits of the Act, it is immaterial whether or not the debtor was an agriculturist at the time when the debt was incurred. The object is really to provide relief for debtors who are agriculturists at the commencement of the Act (*vide* S. 7) while S. 19 read with definition of an agriculturist [*vide* S. 3 (*ii*)] seems to require that the debtor seeking relief should be an agriculturist at the time of the application. The first para. of S. 10 further requires with a view to prevent abuse of the provisions of the Act, that the debtor should be an agriculturist on 1–10–1937.[44] Therefore the essential points of time at which a person should be an agriculturist are 1–10–1937, 22–3–1938, and date on which the actual matter was raised before the Court.[45]

The crucial dates are 1–10–1937 and 22–3–1938. It is not necessary that interest should continue to date when the matter comes before Court.[46]

Decree after Act.—S. 19 does not apply to decrees passed, original or appellate, after the commencement of the Act, the reason being that

(40) *Vallabhacharlu* v. *Rangacharlu*, 52 L.W. 385: (1940) 2 M.L.J. 416 1940 M.W.N. 936: 1941 M. 76.

(41) (C.R. P. 1348/39), 51 L.W. (S.R.C.) 36.

(42) *Nataraja Gounden* v. *Catholic Syrian Bank, Ltd.*, (C.M.A. 182/39) 52 L.W. (S.R.C.) 59: (1940) 2 M.L.J. (N.R.C.) 60.

(43) *Ramamurthy* v. *Jagaddeva Raja Bahadur*, (C.R.P. 2169/1939), (1941) 1 M.L.J. (N.R.C.) 51.

(44) *Palani Gounden* v. *Peria Gounden*, 52 L.W. 819: (1940) 2 M.L.J. 887: 1940 M.W.N. 1247: 1941 M. 158. *Sastri Ammal* v. *Arunachela Chettiar*, A.A.O. 231/47 (1949) 1 M.L.J. (N.R.C.) 66.

(45) *Devarayan Chettiar* v. *Subramanya Aiyar*, (C.R.P. 597/1938), (1941) 2 M.L.J. 257: 53 L.W. (S.R.C.) 38: (1941) 1 M.L.J. (N.R.C.) 31: 1941 M.W.N. (N.R.C.) 34 (2): 54 LW 181: (1941) 2 M.L.J. 257.

(46) *Pappammal* v. *Ramaswamy Chettiar*, 55 L.W. (365): (1942) 2 M.L.J. 498: 1942 M.W.N. 809: 1942 M. 726 (2).

the defendant must urge the relief under Act in the proceeding, otherwise waiver operates

ILLUSTRATIONS

(1) Where an application to scale down a decree against which an appeal was pending was dismissed and an appeal which was preferred against the dismissal, was not clubbed with the main appeal which was allowed to be disposed off *ex parte*. The original decree which had been superseded after the Act came into force, by the appellate decree could not be scaled down and hence the disposal of appeal in the scaling down application becomes infructuous and has to be dismissed.[48]

(2) A debt for the repayment of which a decree has been passed after the Act but which was incurred before 1–10–1932 is not liable to be scaled down under S. 8. "If the Legislature intended to exclude the operation of finality of decrees against agriculturists passed before or after the commencement of the Act, the provision of S. 19 and latter part of S. 18 (1) relating to amendment of decrees passed before the commencement of the Act would be meaningless and otiose."[49]

(3) Decree passed on 25–3–1938 cannot be scaled down under S. 19.[50]

(4) **Preliminary decree on mortgage.**—Where a preliminary decree on a mortgage has been passed after the Act, the debtor cannot subsequently apply to scale it down. It is the preliminary decree in a mortgage suit which fixes the rights and liabilities of parties and it merely gives time to the mortgagor to pay off the decretal amount and redeem the mortgage. The final decree does not change the position except that it gives the mortgagee the right to sell the property for realising the amount declared to be due by the preliminary decree.[51]

(5) A reservation of right to get the decree scaled down in a judgment dismissing a second appeal after the Act is contrary to the Act and cannot be availed of for putting in an application for scaling down under such reservation.[21]

Final decree.—The language of S. 19, *i.e.*, "decree for repayment of a debt" is wider than words "decree for repayment of money" occurring in O. 21, r. 16 of the Code of Civil Procedure. A final decree in a mortgage suit is one for repayment of a debt.[53]

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(48) *Ramaswami Udaiyar* v. *Ramanathan Chettiar*, 53 L.W. 22: (1941) 1 M.L.J. 6: 1941 M.W.N. 51.

(49) *Kotayya* v. *Punnayya*, 52 L.W. 176: (1940) 2 M.L.J. 202: 1940 M.W.N. 809: 1940 M. 910: I.L.R. 1940 M. 1023.

(50) *Unneeri Nair* v. *Krishna Aiyar*, (C.R.P. 1519/1938), (1941) 1 M.L.J. (N.R.C.) 7.

(51) *Varadaraja Pillai* v. *Rukmani Ammal*, (O.S.A. 52/40), (1941) 1 M.L.J. (N.R.C.) 31.

(52) *Srinivasa Iyengar* v. *Edanaga Pira Nadir*, (C.R.P. 1667/1939), 53 L.W. (S.R.C.) 49: (1941) 1 M.L.J. (N.R.C.) 41.

(53) *Tirumalarao* v. *Kasturichand Hannumandas Firm*, (C.R.P. 536/1941), 53 L.W. (S.R.C.) 65: (1941) 1 M.L.J. (N.R.C.) 73.

Persons who can apply and who cannot apply are given below.—

Heirs, legal representatives and assigns.

"Judgment-debtor," includes heirs, legá representatives and assigns. Such persons ar entitled to apply for scaling down a decre even though they are not parties to the decree.[54]

Purchaser of equity of redemption.—A purchaser of equity o redemption from a judgment-debtor is entitled to apply for scalin down the mortgage decree.[55]

An application under S. 19 cannot be rejected on the ground tha applicant was not a judgment-debtor by reason of his having bee impleaded in the suit on mortgage as the vendee of the hypotheca or o the ground that the liability sought to be scaled down is one in respect of which there is a charge under S. 55 (4) (*b*) of Transfer of Property Act so as to attract the applicability of S. 10 (2) (i)[56]. The fact that the mortgagor applicant's interest in the equity of redemption had been sold to the prior mortgagee does not prevent him from applying unde S. 19 as a judgment-debtor when the decree reserves to the mortgagee plaintiff right to apply for personal decree against the mortgagor.[57] All the mortgagors are agriculturists. Scaling down of the mortgage decree was ordered with respect to all the judgment-debtors excepting first defendant who did not apply. There is no specification of the different interests of hypotheca of several defendants. Other defendants made payments when the decree was put in execution. First defendant deposited an amount equal in difference between the scaled down amount and payments made by other defendants and prayed that deposit be accepted and full satisfaction recorded and hypotheca released. As the decree is one and indivisible, first defendant cannot be precluded from claiming relief by depositing the balance, as the decree holder could sell hypotheca only for the reduced amount.[58]

The Official Receiver.—The 'judgment-debtor' is wide enough to cover Official Receiver in whom the estate of judgment-debtor is vested who is the only person to satisfy the decree debt.[59]

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(54) *Palani Gounden* v. *Peria Goundan*, 52 L.W. 819 : (1940) 2 M.L.J. 887 : 1940 M.W.N. 1247 : 1941 M. 158, disapproving *Horwill, J.'s* decision in *Ganapath Bhatta* v. *D'Sowza*, (1940) 2 M.L.J. 317 : 1940 M.W.N. 828 : 1940 M. 907 : 191 I.C. 744.

(55) *Palani Gounden* v. *Peria Gounden*, 52 L.W. 819 : (1940) 2 M.L.J. 887 : 1940 M.W.N. 1247 : 1941 M. 158, disapproving *Horwill, J.'s* decision in *Ganapathi Bhatta* v. *D'Sowza*, (1940) 2 M.L.J. 317 : 1940 M.W.N. 828 : 1940 M. 907 : 191 I.C. 744.

(56) *Palanivel Gounden* v. *Subbaraya Gounden*, 54 L.W. 240 : 1941 M.W.N. 804 : 1941 M. 889 (1).

(57) C.R.P. 2479/41, 54 L.W. (S.R.C.) 81

(58) *Kailasa Thevar* v. *Ramasamy Ayyangar*, (1948) 2 M.L.J. 28 : (1948) M.W.N. 393.

(59) *Sivaramayya* v. *O.R. of West Godavari*, (1943) M.L.J. 41 : 1943 M.W.N. 350 : 1943 M. 558 : 210 I.C. 489 ; *Subrahmanya Iyer*, v. *Sivakami Achi*, 57 L.W. 34 : (1944) 1 M.L.J. 38 : 1944 M.W.N. 118 : 1944 M. 256.

Decree against the assets of a deceased person.—Where a decree was passed against the assets of the deceased husband in the hands of a woman, she is a judgment-debtor within S. 19 and can apply for scaling down.[60]

Person exonerated in decree.—A person who has been exonerated from the decree has no liability to be scaled down and has no grievance against a Court's refusal to proceed under S. 19.[61]

Joint family debt.—Originally there was no provision made for amending a decree of a Hindu joint family debt. By an amendment, the words " or in respect of a Hindu joint family debt on the application of any member whether or not he is the judgment-debtor or on the application of a decree-holder " were inserted, thus making provision for filing petition to scale down a joint family debt.

The decree debt sought to be scaled down is a debt due by the joint family. It is open to any member of a joint family to apply to have the decree debt of the family scaled down under S. 19 and such scaling down is not confined to the share of that member but extends to the entire debt.[61A]

ILLUSTRATION

Where the pronote was executed by a purchaser of property subject to mortgage, as manager of a joint Hindu family, any member of the family is entitled to apply for scaling down the debt treating the liability as having been renewed or included in a fresh document within the explanation to S. 8.[62]

Puisne mortgagee.—A puisne mortgagee who had been impleaded in a suit by prior mortgagee is entitled to apply for scaling down the latter's decree debt as a judgment-debtor and the fact that the mortgagor is not an agriculturist is no bar to puisne mortgagee's right to have the debt scaled down, if he is shown to be an agriculturist.[63]

Where in execution of a decree passed on mortgage, the mortgaged property was brought to sale, mere holding of sale without applying the Act when there is no application is not a material irregularity such as would justify an application under O. 21, r. 90, at the instance of a person in whose favour a mortgage had been created subsequent to the decree and prior to 1937. But such puisne mortgagee is entitled to apply under S. 19 on the ground that he is a judgment-debtor even though his mortgage was created subsequent to the decree.[64]

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(60) (C.R.P. 968/1939), 51 L.W. (S.R.C.) 36.

(61) (C.R.P. 243/1939), 52 L.W. (S.R.C.) 8.

(61-A) *Subbu Pandaram* v. *Lakshminarayana Chettiar*, 51 L.W. 269 : (1940) 1 M.L.J. 300 : 1940 M.W.N. 283 : 1940 M. 435.

(62) *Doraikannu Udayar* v. *Veeraswami Padayachi*, 52 L.W. 582 : (1940) 2 M.L.J. 651 : 1940 M.W.N. 1042 : 1941 M. 59.

(63) *Ramier* v. *Srinivasaiah*, 52 L.W. 842: (1940) 2 M.L.J. 872 : 1940 M.W.N. 1218 : 1941 M. 204 ; *Tirumal Rao* v. *Kasturichand Hanumandas Firm* (C.R.P. 536/41), 53 L.W. (S.R.C.) 65 : (1941) 1 M.L.J. (N.R.C.) 73.

(64) *Madurakavi Iyengar* v. *Chinaswami Chetti*, 55 L.W. 812 : (1943) 1 M.L.J. 136 : 1942 M.W.N. 736 : 1943 M. 134 : 207 I.C. 438.

Payment by agriculturist.—Payment by an agriculturist to mortgage debt would be taken into consideration.[64]

Agriculturist and non-agriculturist debtors.—Extent of relief.—When there are agriculturists and non-agriculturist debtors liable under the same debt, relief should be confined to the agriculturist debtor but would not enure to the benefit of the other parties who are non-agriculturists.[65]

ILLUSTRATIONS

(1) Where a puisne mortgagee impleaded in a suit by prior mortgagee is an agriculturist and applies for scaling down, the mere fact that he has sub-mortgaged his interest to a non-agriculturist, will not deprive him of the benefits of scaling down. "It will of course be necessary to modify the form of the decree, reciting separately the amount payable by the puisne mortgagee and declaring that on payment of this amount by him, the interest of the puisne mortgagee will not be liable to be sold or foreclosed and the hypotheca will be sold only subject to that interest and that on failure of the puisne mortgagee to pay the amount declared to be due from him within the time allowed, the whole of the mortgaged property including the entire interest of the puisne mortgagee will be liable to be sold for the full amount of the decree. This procedure will give to the agriculturist judgment-debtor the full benefit of the relief to which he is entitled under the Act and will safeguard the rights of the decree-holder as against those judgment-debtors who are not agriculturists.[66]

(2) Subsequent to the final decree in a suit on a mortgage, the mortgagor sold considerable portion of the mortgage property to a non-agriculturist and when the mortgagor applied for scaling down, by way of counter-blast decree-holder applied to implead the purchaser as a party to the final decree. There is no warrant for holding that when the sole judgment-debtor on the record is an agriculturist, the scaling down of the decree should be restricted so as not to affect any portion of property covered by the decree which has come into the hands of a non-agriculturist after suit and there is no point in impleading the purchaser who has no separate rights to agitate in the execution of the decree. Here the vendee is not a party to the suit and so the principle that the decree should not be scaled down so far as he is concerned does not apply.[67]

(3) Agriculturist mortgagors brought a suit for redemption impleading the purchasers as co-plaintiffs, redemption of the whole could not be denied to them though purchasers are non-agriculturists, and full satisfaction must be entered after scaling down the debt.[68]

(65) *Ramier* v. *Srinivasaiah*, 52 L.W. 842 : (1940) 2 M.L.J. 872 : 1940 M.W.N. 1218 : 1941 M. 204.

(66) *Ibid.*

(67) *Satyanarayanamurthi* v. *Gangisetti*, 53 L.W. 162 : (1941) 1 M.L.J. 223 1941 M.W.N. 284.

(68) *Marina Ammayi* v. *Mirja Baksher Beig Sahib*, 53 L. W. 490 : (1941) 1 M.L.J. 547 : 1941 M.W.N. 387 : 1941 M. 557 .

(4) During the pendency of a suit to enforce mortgage against the mortgagor and purchaser, the Act came into force. The mortgagor against whom the personal remedy subsisted applied for scaling down the debt on the ground of his being an agriculturist. The mortgagee then filed a memo foregoing his personal remedy against the mortgagor. The debt should be scaled down and it would enure to the benefit of the purchaser even though he is a non-agriculturist. "It is undoubtedly true that agriculturist debtors only are entitled to the relief provided in the Act which does not contemplate any scaling down of debts due by others, but it does not follow that a non-agriculturist can in no circumstances be benefited by the scaling down of a debt under the provisions of the Act, when a person purchased properties subject to the burden of a mortgage and if the burden is by reason of S. 8 reduced without payment, the purchase proves to that extent an advantageous one and there is nothing in the Act to deprive him of the fruit of his lucky purchase even though he is not an agriculturist. He gets the benefit of scaling down not because the provisions of the Act apply to him, for obviously they do not, but because such benefit is a necessary incident of his purchase under General Law and the Act does not deprive him of it."[69]

(5) *X* the purchaser of a part of hypotheca has been impleaded as a defendant in a mortgage suit which resulted in a final decree. The mortgagor is a non-agriculturist but *X* is an agriculturist. *X* can apply for scaling down notwithstanding the fact that the mortgagor is a non-agriculturist. The decree can be amended so as to leave it unaffected so far as the liability of non-agriculturist debtor is concerned.[70]

(6) Where there are both agriculturist and non-agriculturist judgment-debtors in respect of a mortgage decree, the payment by an agriculturist debtor of the amount due under the decree as scaled down on his application, operates as a complete discharge of the decree against the non-agriculturist judgment-debtors and makes it inexecutable against them for the balance of amount due thereunder if there has been no scaling down.[71]

(7) Non-agriculturist purchasers are entitled to the benefit accrued to an agriculturist mortgagor in a suit for redemption.[72]

(8) Where in a suit on mortgage to which non-agriculturist purchasers of hypotheca subject to mortgage have been made parties to the debt scaled down at the instance of mortgagor an agriculturist, it is open to purchasers to claim that the properties purchased

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(69) *Arunachela Pillai* v. *Sitaram Naidu*, 53 L.W. 515 : (1941) 1 M.L.J. 561 : 1941 M.W.N. 390 : 1941 M. 584.

(70) *Arumugam* v. *Sadasivam*, (C.R.P. 1655/40), 53 L.W. (S.R.C.) 9 : (1941) 1 M.L.J. (N.R.C.) 11.

(71) (A. No. 94/37), 53 L.W. (S.R.C.) 11.

(72) *Satyanarayana* v. *Sathiraju*, 55 L.W. 280 : (1942) 1 M.L.J. 506 : 1942 M.W.N. 365 : 1942 M. 535.

by them can be proceeded against only for scaled down amount and no more.[73]

(9) When the mortgagor was not an agriculturist, and the mortgage decree had been scaled down only so far as purchaser of a portion of hypotheca who was an agriculturist is concerned and had been left intact against another defendant, who was not an agriculturist and purchased the other portion of the hypotheca, agriculturist purchaser of a portion was not entitled to redeem the whole of security on payment only of the scaled down amount so as to prevent the mortgagee from recovering the mortgage money in full from the rest of the hypotheca in the hands of non-agriculturist purchaser from mortgagor.[74] The principle laid down[75] that when an agriculturist mortgagor redeems the mortgage by paying the mortgage debt as scaled down, a purchaser of a portion of hypotheca is also benefited under General Law by reason of whole property being relieved of the encumbrance although such purchaser is not an agriculturist and cannot himself claim benefit of the Act, should not be extended to cases where mortgagor is not an agriculturist and the question arises between purchasers of different portions of hypotheca; some of whom are and others are not agriculturists.

(10) A mortgage was executed in 1908 by father of D.-1 to 4. They sold the hypotheca in 1925 to D.-5 who became insolvent in 1930, the Official Receiver resold the hypotheca to D.-8. In a suit on mortgage filed after the personal remedy is barred, a preliminary decree was passed in 1933 and final decree in 1934. In an application by D.-1 and 8 for amendment of decree under S. 19, it was found that D.-8 was not an agriculturist though D.-1 was an agriculturist. D.-1 is not entitled to get decree debt scaled down for the benefit of D.-8 against whom alone the mortgage decree was capable of being enforced at the time when the Act came into force. Before the Court reduces the debt by application of scaling down provisions, it must be satisfied that there was at the date of commencement of the Act, a debt due from an agriculturist and such debt was one which the agriculturist could be compelled to pay by the legal process. The provisions are not intended to benefit agriculturists who voluntarily paid debts which could not be enforced against them. The rule applies equally whether the relief sought is in pending suit or by means of an application under S. 19.[76]

(11) Where a mortgage decree for a particular amount as against mortgagors and purchasers from them of different portions of hypotheca

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(73) *Nachiappa Chettiar* v. *Ramachandra Reddiar*, 55 L.W. 283 (1): (1942) 1 M.L.J. 510: 1942 M. 529.

(74) *Srinivas Tatachariar* v. *Subramanya Chettiar*, 55 L.W. 741: (1942) 2 M.L.J. 631: 1942 M.W.N. 798: 1943 M. 196: I.L.R. 1943 M. 665: 207 I.C. 253.

(75) *Nachiappa Chettiar* v. *Ramachandra Reddiar*, 55 L.W. 283 (1): (1942) 1 M.L.J. 510: 1942 M. 529.

(76) *Sundararaja Reddiar* v. *Ramachandra Reddiar*, (1945) 1 M.L.J. 385: 58 L.W. 286: 1945 M.W.N. 883: 1945 M. 385.

has been scaled down on an application by some of judgment-debtors including mortgagors and the amount of decree reduced against such applicants and a final decree passed accordingly the effect of payment of reduced amount by mortgagors is to discharge the decree as a whole even as against defendants who have not actually applied for benefit in their right as agriculturists.[77]

(12) A non-agriculturist purchaser of mortgaged property is not entitled to relief under the Act when agriculturist mortgagor is not at the time when the matter comes before Court personally liable to discharge the debt and has not claimed relief under the Act.[78]

Applicant not a debtor at the time of Act.—When a person who purchased property in 1940 bound by a decree, applied for scaling down he being not a debtor when the Act came into force, there can be no question of scaling down under S. 19.[79]

Decree barred.—It is not open to Court to scale down a decree at the instance of decree-holder under S. 19 without deciding the contention that the decree is barred or not on the ground that it cannot be gone into under S. 19[80].

Application by non-agriculturist.—There is no jurisdiction under S. 19 to amend a decree on application by a judgment-debtor who is admittedly a non-agriculturist. Whether or not the non-agriculturist judgment-debtor would be entitled to the benefits of S. 14 if and when the agriculturist debtors get the decree re-opened under S. 19, is a matter which cannot be decided in proceedings under the Act started by non-agriculturist judgment-debtor.[81]

Co-judgment-debtors.—On the foot of a mortgage executed by a Mohammadan, a decree was obtained by the mortgagee. The mortgagor died and his son applied for setting aside the sale in execution and scaling down. The other heirs of the mortgagor were also made party respondents to the application. Before the application was heard, the applicant filed a memo, withdrawing his application. Then the other respondents, who, till then were hostile to the applicant, filed an application under O. 1, r. 10 of the Code of Civil Procedure to transpose them as petitioners. This application was dismissed with liberty being given to them to file a counter to the application filed originally for scaling down the debt. The sale held in execution of the decree was set aside, as the application enured for the benefit of the

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(77) *Subramanya Chettiar* v. *Ramachandra Reddiar*, 59 L.W. 710 : (1946) 2 M.L.J. 429 : 1947 M. 255.

(78) *Sugunadha Mudaliar* v. *Kuppusamy Chettiar*, 60 L.W. 583 : (1947) 2 M.L.J. 273 : 1948 M.W.N. 542.

(79) *Kaligounden* v. *Annamalai Chetty*, 56 L.W. 692 : (1943) 2 M.L.J. 531 : 1943 M.W.N. 766 : 1944 M. 128 : 213 I.C. 168.

(80) *Satyanarayanamurti* v. *Jaganatha Rao*, 56 L.W. 413 (2) : (1943) 2 M.L.J. 135 : 1943 M. 651 : 210 I.C. 448 : *Srinivasachari* v. *Chunilal Mulchand Co.*, C.R.P. 348/43 : (1944) 1 M.L.J. (N.R.C) 37 (1).

(81) *Ponnuswami* v. *Kunniappa*, (C.R.P. 1746/1939), (1941) 1 M.L.J. (N.R.C.) 17.

other judgment-debtors who were respondents in the application even though they did not support the applicant.[82]

Surety.—According to S. 126 of the Indian Contract Act, "A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default." The person who gives the guarantee is called the surety. Thus the liability of the surety is secondary and accessory, to be invoked only on default by the person who is primarily liable (*i.e.*) the principal debtor. Under S. 128 of the Indian Contract Act, the liability of the surety is co-extensive with that of the principal debtor. When the liability of judgment-debtor is discharged, the liability of the surety shall be deemed to be discharged. The illustration (*b*) of S. 133 makes it clear that the variation in the terms of the contract with the principal debtor, even though effected by the legislature, would discharge the surety. Thus when the agriculturist principal debtor is discharged from his liability by virtue of the operation of the scaling down provisions of the Act, his non-agriculturist surety will be discharged *pro tanto*. If the creditor has recovered the debt in full from the surety, the surety has a right to be reimbursed from the agriculturist principal debtor the sum he has rightfully paid under the guarantee as according to S. 145 of the Indian Contract Act, there is an implied promise by the principal debtor to indemnify the surety. If the surety is a party to the decree, he being a judgment-debtor can apply for amending the decree under S. 19. Some questions of difficulty would arise in cases where the surety is not a party to the decree. A surety for amount of advance after 1–10–1932 liable under a bond executed by him cannot apply to have the decree amended under S. 19, though he might have a right to reduction of interest on the amount decreed treating it as a debt under S. 9. The question whether the discharge of the principal debtor will operate to discharge the surety is not one which can be gone into in an application by the principal debtor under S. 19, but must be settled only if and when an attempt is made to enforce the bond against the surety.[83]

A non-agriculturist judgment-debtor is not entitled to claim relief under the Act on the ground that he is only a surety. The Court in scaling down is entitled to proceed in accordance with the provisions of the Act and the contention that one judgment-debtor being a surety, is entitled to a relief by reason of his status as a surety for which the Act makes no mention, must fail. The surety must seek that relief by means of ordinary procedure in execution and not by S. 19.[84]

In a suit against principal debtor who was an agriculturist and against his surety who was not, to recover a debt incurred prior to the Act, where the discharge of the principal was by operation of a statute subsequently passed, the surety could not claim a *pro tanto* discharge with the principal debtor and hence even though agriculturist

(82) *Seshayya* v. *Punnayya*, (C.M.As. 27 and 28/1939), 52 L.W. (S.R.C.) 68 (1940) 2 M.L.J. (N.R.C.) 69.
(83) (C.R.P. 1965/1939), (1941) M.W.N. (N.R.C.) 53.
(84) (C.R.P. 1869/1939), 53 L.W. (S.R.C.) 72 : 1941 M.W.N. (N.R.C.) 51 (2).

debtor was entitled to have the debt scaled down under the Act, his non-agriculturist surety would be liable for the whole amount.[85] A person gave surety bond undertaking to satisfy any decree which might be ultimately passed against judgment-debtors under an ex-parte decree which was set aside on such undertaking. The decree itself is in respect of pronotes in renewal of earlier ones. When the liability under the ultimate decree was sought to be enforced against surety, since the surety is for purposes of execution in the position of a judgment-debtor there is no reason why he should not be given the benefit of procedure laid down in S. 19 for agriculturist debtors. The liability of the surety must be taken to have arisen in 1934 when the bond and the decree came into existence and the surety is entitled to benefits under S. 9. The surety, however, is not entitled to go behind the decree and have the liability reduced with reference to the original pronotes by debtor.[86]

Application by minor.—The contention that an application under S. 19 by a minor must be preferred by the same guardian who was guardian *ad litem* in execution of the decree lacks authority as the proceeding under S. 19 is neither a proceeding in the suit nor in execution.[87]

Analogous procedure.—Procedure analogous to S. 19 may be adopted in cases of orders of final adjudication determining the liability.

ILLUSTRATION

Order for restitution.—Though an order under S. 151, Civil Procedure Code, which determined the precise amount due in proceedings for restitution, may not be technically speaking a decree, it is certainly a final adjudication of the amount payable by a person to another which could be modified by some procedure known to law. In such a case procedure analogous to that in S. 19 should be applied.[88]

Final adjudication order after Act.—When such a final adjudication was made after the Act came into force and when the person liable to pay failed to apply for relief under the Act at a time when it was available to him, he cannot be heard to put it forward at a later stage as a reason for modifying the order.[89]

Proviso.—The plain wording of S. 19 indicates that before applying the provisions of the Act to a decree it is necessary first to satisfy the requirements of proviso by adjusting from the payments already

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(85) *Subrahmanya Chettiar* v. *Chinna Muthu Batcha* 54 L.W. 553: (1941) 2 M.L.J. 751: 1941 M.W.N. 792: 1942 M. 145.

(86) *Muthyalu* v. *Chinnayya,* 54 L.W. 699: (1941) 2 M.L.J. 1010: 1942 M.W.N. 61: 1942 M. 149.

(87) (C.R.P. 2132/1939), 53 L.W. (S.R.C.) 79.

(88) *Kailasnath Nainar* v. *Natesan Chettiar,* (C.R.P. 355/1941), (1941) 1 M.L.J. (N.R.C.) 76.

(89) *Ibid.*

made towards the decree an amount necessary to satisfy the decree for costs. There is nothing either in this section or in S. 11 to indicate that the adjustment prescribed by this proviso is subject to appropriation towards interest made before 1-10-1937. There is no basis in the language of the proviso for the theory that this process of reappropriation and re-adjustment is to begin only with payments made after 1-10-1937 or is subject to the cancellation of the interest outstanding on that day.[90]

ILLUSTRATION

When there was a payment of Rs. 8,500 towards a decree and creditor's order of assessment shows that Rs. 5,000 was adjusted to principal and Rs. 3,500 to interest, these payments should contribute rateably in making reappropriation towards costs under the proviso.[91]

A payment of Rs. 450 made by D.-7 pending a suit on mortgage was appropriated by Court to the amount of interest due on mortgage in the decree, dated 3-6-1936. No objection was taken to the appropriation, and when an appeal was filed, it was not contended that the appropriation was wrong. The appeal decree was dated 28-9-40. It was contended before the High Court in second appeal that it was open to defendants to urge that this sum of Rs. 450 should be appropriated towards principal. The reopening of the decree under S. 19 was for purposes of applying the provisions of the Act which permits the re-appropriation of payment before 1-10-1937 except only proviso to S. 19 which deals in the payments made under decree.[92]

Interest on costs.—It may be contended that the phrase "costs as originally decreed" means costs without any scaling down. "It is equally likely that the phrase was intended to mean the principal amount of costs and to exclude interest thereon. At any rate there is nothing in S. 19 which is inconsistent with the view that the appropriation therein provided for was intended to be only in respect of principal sum for costs or that this provision had any other object than to give effect to the provision of S. 11". Thus a payment should be credited only to the principal amount of costs.[93]

Proceeds of execution.—Where the proceeds resulting from a sale in execution of a compromise decree which did not provide for costs were held in suspense and paid after the amendment of the decree which provided for costs, the proviso to S. 19 would apply to the amount recovered.[94]

Uncertified payments.—When a judgment-debtor applies under S. 19 to scale down, he can prove payments which have not been

(90) *Balasubrahmanyam Gounden* v. *Muthukrishna Pillai,* (C.M.A. 47/1939) 52 L.W. (S.R.C.) 65: (1940) 2: M.L.J. (N.R.C.) 62.

(91) *Srinivasachariar* v. *Krishnayya Chetty,* 53 L.W. 721: 1941 M.W.N. 625.

(92) *Natesa Mudaliar* v. *Rajamanickam,* 55 L.W. 607: (1942) 2 M.L.J. 424: 1942 M.W.N. 79: 1942 M. 729.

(93) *Palani Gounden* v. *Muthuswami Gounden,* 52 L.W. 638: (1940) 2 M.L.J. 707: 1940 M.W.N. 1128: 1941 M. 52.

(94) (C.M.A. 55/1939), 52 L.W. (S.R.C.) 56.

certified, for the purpose of satisfying the decree regarding costs, as the Court is not executing the decree.[95]

For purpose of scaling down, it is not concerned with payments made after 1-10-1937. Payment after preliminary decree and before final decree uncertified cannot be allowed to be pleaded after a final decree.[96] If for the purpose of scaling down a debt embodied in a decree the Court finds it necessary to ascertain what payments have been made towards that decree, the bar under O. 21 r. 2 of C.P.C. would not prohibit proof of payments which have not been certified.[97]

When the application to be made.—The application under S. 19 has to be made only before the decree is fully satisfied. If it is fully satisfied there is no longer any decree which has got to be amended.

ILLUSTRATION

Where pending a judgment-debtor's application under O. 21, r. 90, Civil Procedure Code, to set aside on the ground of irregularity an auction sale in which the decree-holder who obtained the leave of the Court to bid and set-off, had become the purchaser, the judgment-debtor applied for scaling down. The application is maintable as, on the date of the application, the decree is still not satisfied before the confirmation of the sale by mere purchase and set-off by the decree-holder under O. 21, r. 72, Civil Procedure Code.[98]

Dismissal for default.—*Res judicata.*—When a previous application for scaling down has been dismissed for default and a restoration petition has also been dismissed, a fresh application for the same relief is barred by the principle of S. 11, Civil Procedure Code.[99]

Compromise decrees.—Where there is a compromise decree before 1-10-1932 which is demonstrably a renewal of an earlier debt, the debt must be scaled down under S. 8 treating as the principal of the debt amount originally advanced and any subsequent sums lent to the extent to which the original debt can be said to have been renewed by the agreement of compromise, embodied in the decree.[1]

In a more complicated case where the compromise is the result of mutual concessions and advantages which together make up an agreement from which it would be difficult to disentangle that part which is a renewal of original debt, we cannot go behind the compromise decree. Whether the compromise forming the subject of a decree is

(95) *Ramamurthi* v. *Seetharamayya*, 52 L.W. 262: (1940) 2 M.L.J. 293

(96) *Jayaramarao* v. *Venkata*, L.P.A. 52/46, 59 L.W. (S.R.C.) 114.

(97) *Raju* v. *Mahalakshmamma*, 55 L.W 491 : I.L.R. 1943 M. 138 : (1942) M.L.J. 195 : 1942 M.W.N. 494 : 1940 M.W.N. 839 : (1941) M. 56 : I.L.R. (1940) M. 947.

(98) *Nadaraja Pillai* v. *Rangaswami Karumunder*, (C.M.As. 325 and 428' 1939), 52 L.W. (S.R.C.) 60 : (1940) 2 M.L.J. (N.R.C.) 60 (2).

(99) *Kotayya* v. *Venkata Krishnayya*, (C.R.P. 1166/1939): (1940) 2 M.L.J. (N.R.C.) 37.

(1) *Ramamurthi* v. *Sitaramayya*, 52 L.W. 262 : (1940) 2 M.L.J. 293 : 1940 M.W.N. 839 : 1941 M. 56 ; I.L.R. 1940 M. 947 (C.R.P. 1169/1939) : 52 L.W. (S.R.C.) 10 ; (C.M.S.A. 31/40) : 51 L.W. (S.R.C.) 51.

or is not a renewal of a pre-existing liability must, to a large extent, be a question of fact in each case.[1]

ILLUSTRATIONS

(1) A compromise decree of 1937 for a debt prior to 1–10–1932 must be scaled down under S. 8.[2]

(2) In the case of a compromise decree passed after 1–10–1932 in respect of a mortgage executed prior to 1–10–1932 by a successful bidder at an auction chit, the Court must scale down the entire debt under S. 8, treating as the principal the original mortgage debt which can be said to have been renewed by the agreement of compromise embodied in the decree.[3]

(3) Defendants 1 and 2 executed a mortgage on 13–12–1923 in favour of the plaintiff, in renewal of an earlier mortgage of 16–8–1917 in favour of the same creditor by the husband of 1st defendant and father of 2nd defendant. The mortgagors on 27–12–1933 sold the hypotheca to the 4th defendant who undertook to discharge the mortgage by payment of Rs. 25,000 out of the purchase price. She failed to pay and in the mortgage suit a compromise decree was passed containing a direction to pay a particular amount with a default clause providing for the payment of the full amount. The whole of liability of under compromise being only a renewal of the previous mortgage liability, the fact that the decree was on a compromise did not affect the right of 4th defendant, *i.e.*, the purchaser to have it scaled down.[4]

(4) Pronote before 1–10–1932 is followed by a letter of guarantee after 1–10–1932. The suit on it ended in a compromise for a fixed sum including costs and interest. The decree on the compromise is substantially the same as a decree on any other contract and to the extent to which it is a renewal of pre-existing debt the decree has to be scaled down with respect to the original principal.[5]

Nature of Petition: Original Proceeding.—The nature of an application under S. 19 is akin to the original petition and so S. 141, Civil Procedure Code, applies to such a petition and according to O. 7, r. 10, the application ought to have been returned for presentation to proper Court but not dismissed.[6]

(1) *Ramamurthi* v. *Sitaramayya*, 52 L.W. 262: (1940) 2 M.L.J. 293: 140 M.W.N. 839: 1941 M. 56; I.L.R. 1940 M. 947 (C.R.P. 1169/1939), 52 L.W. (S.R.C.) 10; (C.M.S.A. 31/40), 51 L.W. (S.R.C.) 51.

(2) *Narayanaswami Naidu* v. *Rajamanickam Pillai*, 51 L.W. 237: (1940) 1 M.L.J. 225: 1940 M.W.N. 265: 1940 M. 419, differing from the decision of Panduranga Rao, J., in (C.R.P. 86/1939), 50 L.W. (S.R.C.) 21.

(3) *Kannan Nambiar* v. *Subrahmanya Pattar*, 52 L.W. 857: (1940) 2 M.L.J. 927: 1941 M.W.N. 76: 1941 M. 231.

(4) *Venkatammal* v. *Ramaswami Iyer*, 52 L.W. 607: (1940) 2 M.L.J. 685: 1940 M.W.N. 1081: 1941 M. 62.

(5) *Narayana Chettiar* v. *Ottu Veera Gounden*, (C.M.A. 72/1939), 52 L.W. (S.R.C) 58: (1940) 2 M.L.J. (N.R.C.) 59.

(6) *Satyanarayana* v. *Peddi Naidu*, 52 L.W. 846: (1940) 2 M.L.J. 940: 1940 M.W.N. 1258.

Appeal.—The new r. 8 (*b*) was framed providing for appeals against the order under S.19 as if it relates to execution discharge or satisfaction of the decree within the meaning of S. 47, Civil Procedure Code. This provision of appeals is held to be *ultra vires.*[7] Therefore the decisions under this new rule, that the rule is not retrospective and revision only lies against orders passed before 27-10-1939, when the rule is promulgated, [8] etc., are now of no avail at all.

An order made under S. 19 when no proceedings in execution are pending, is not appealable and the question cannot be considered to be falling within S. 47, Civil Procedure Code, in the absence of execution proceedings.[9]

The fallacy in this decision is made obvious by their Lordships in a subsequent decision, [10] where it is held that an order would not be appealable even though execution application was pending and that the application under S. 19 must be made to the Court which passed the decree and it is not a matter relating to the execution of the decree in any sense.

Therefore, proceedings under S. 19 are not in execution and no appeal lies.[11] The only course open is by way of revision: " Its function is to apply the provisions of the Act if he is entitled to the scaling down. If the scaling down does not wipe out the decretal amount then an amended decree is passed which can only be enforced in execution proceedings separately instituted under Civil Procedure Code. If the scaling down wipes out the amount, the Court cannot pass an amended decree. It must then declare that the decree has been satisfied. But here entering satisfaction is not in execution proceedings but proceedings under the Madras Agriculturists' Relief Act, which are of independent nature."[11]

This case has been overruled by the Privy Council [12] which held that where a legal right is in dispute and the ordinary courts of the country are seized of such dispute, the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorized by such rules notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal. This rules applies to a decision under S. 19 of this Act on the question whether the judgment-debtor is an agriculturist and

(7) *Nagappa Chettiar* v. *Annapurna Achi,* 53 L.W. 79 : (1941) 1 M.L.J. 164 : 1941 M.W.N. 131 : 1941 M. 235 : I.L.R. 1941 M. 261 (F.B.).

(8) *Chidambaram* v. *Muthu Kumaraswami,* 51 L.W. 447 : (1940) 1 M.L.J. 317 : 1940 M.W.N. 301 : 1940 M. 417; (C.R.P. 107/39), 51 L.W. (S.R.C.) 26.

(9) *Subbarayudu,* In re, 50 L.W. 537 : (1939) 2 M.L.J. 609 (1) : 1939 M.W.N 1160 (1).

(10) *Pakkiri Mohammed Taraganar* v. *Syed Saheb,* 51 L.W. 756 : (1940) 5 M.L.J. 422 : 1940 M.W.N. 290 (1); not following *Venkatappadu* v. *Ramamurthi,* 10 L.W. 851 : (1939) 2 M.L.J. 853 : 1940 M.W.N. 64 : 1940 M. 131.

(11) *Nagappa Chettiar* v. *Annapurna Achi,* 53 L.W. 79 : (1941) 1 M.L.J. 164 : 1941 M.W.N. 131 : 1941 M. 235 : I.L.R. 1941 M. 261 (F.B.).

(12) *Adaikappa Chettiar* v. *Chandrasekhara Thevar* 61 L. W. 52 : (1948) 1 M.L.J. 41 : 1948 M.W.N. 15 : 1948 P.C. 12.

entitled as such to have his debt discharged or reduced under the Act. And an appeal against that decision is therefore maintenable under S. 96 C.P.C., if the application under S. 19 is one made in suit and under S. 47 if it is made in execution.

Appeal from the amended decree.—An order which merely decides that S. 19 is applicable and does not apply it and scale down the decree is not an appealable order. An appeal will lie from the new decree passed after scaling down.[13] If the application is dismissed no appeal can lie.[14] The Full Bench, in their decision,[15] expressed no opinion on the statement that an appeal will lie from the new decree and has also reserved its opinion as to whether order under S. 20 relates to execution and appealable under S. 47, Civil Procedure Code.

Valuation for Privy Council Appeal.—An application for relief under the Act and for entering satisfaction of a decree for Rs. 10,000 was refused by the District Court and an appeal to the High Court was also dismissed as infructuous by reason by the supersession of the original decree by an appellate decree after the Act. In an application for leave to the Privy Council, the scope of relief under the Act is the determining factor and as the principal amount of the debt Rs. 3,200 could not be scaled down, the same ought to be excluded in computing the value of the appeal.[16]

Review.—In so far as orders passed by ordinary Civil Courts under jurisdiction conferred on them by the Act or rules made thereunder can be shown to fall within the scope of O. 47, r. 1 of C.P.C., the Courts have power to review these orders.[17]

Realisation after 1-10-1937.—Realisations on 12-11-1937 must be available in reduction of the decree as a whole. And when at a later date certain of judgment-debtors get the decree scaled down, they were entitled subject to proviso to S. 19 to get credit for payments already made, even though those payments had actually been made from properties of judgment-debtors who were not entitled to relief under the Act.[18]

Bar of fresh application.—It is only in the case of judgment-debtors who are members of a Hindu undivided family which is treated as a unit for the purpose of S. 19, that a stay obtained and not followed up by the judgment-debtor will bar a fresh application by another

(13) (A.A.O. 449/1938), (1939) 2 M.L.J. (N.R.C.) 51; *Pakkiri Mohammad Taraganar* v. *Syed Saheb*, 51 L.W. 756: (1940) 1 M.L.J. 422: 1940 M.W.N. 290 (1): 1940 M. 418.

(14) Vide *Pakkiri Mohammad Taraganar* v. *Syed Saheb*, 51 L.W. 756: (1940) 1 M.L.J. 422: 1940 M.W.N. 290 (1): 1940 M. 418.

(15) *Nagappa Chettiar* v. *Annapurna Achi*, 53 L.W. 79: (1941) 1 M.L.J. 164: 1941 M.W.N. 131: 1941 M. 235: I.L.R. 1941 M. 261 (F.B.).

(16) *Ramaswami Udayan* v. *Ramanathan Chettiar*, (C.M.P. 996/1941), (1941) 1 M.L.J. (N.R.C.) 64: 1941 M.W.N. (N.R.C.) 54.

(17) *Venkatasamy* v. *Lingacheri*, G.R.P. 2517/41, 55 L.W. (S.R.C.) 17 (2) (*a*).

(18) *Subbu Naicker* v. *Perumal Naicker*, A.A. W. 348/43, (1944) 2 M.L.J. (N.R.C.) 12 (1).

judgment-debtor liable as a member of the family. There is no such bar where the judgment-debtors are not members of a joint family.[19] When a Court dealing with an application under S. 19 orders notice to another judgment-debtor and that judgment-debtor appears and files a pleading claiming relief, his right to relief is subject to an adjudication in those proceedings, the Court has no jurisdiction to entertain a further application from him under S. 20 as if he is a person entitled afresh to further benefits of the Act such as would justify such an application.[20]

Restitution.—Where an appellate Court after Act delivered judgment in a mortgage suit without reference to an application under Act pending before it at the time of hearing of appeal, that Court had no jurisdiction at subsequent stage to remand that application to lower Court for the purpose of granting relief under the Act. The mere fact that purchaser in execution of the trial Court's decree is the debtor would not warrant the setting aside of the sale under S. 144, C.P.C., on the ground that there has been a reduction by appellate court's decree of the amount formed by trial court.[21]

Sub-S.2.—The High Court has held that the S. 19 as it stands does not apply to decrees passed after the commencement of the Act. " In a large number of cases, owing to ignorance and several other causes the plea that the Act applied to the debts was not taken by the debtors before the decree was passed, and consequently, they did not get the benefit of provisions of S. 19." In order to effectually afford full relief to agriculturist debtors against whom decrees are passed without the relief of scaling down, this sub-section is added to enable such debtors to apply for scaling down of the decrees passed after the commencement of the Act, *i.e.*, 22-3-1938 in respect of debts payable then.

Inserted by S. 2 of Madras Act XV of 1943.

19-A : (1) Where any debt incurred before the 22nd March, 1938, other than a decree debt, is due by any person who claims that he was an agriculturist both on that date and on the 1st October, 1937, the debtor or the creditor may apply to the Court having jurisdiction for declaration of the amount of the debt due by the debtor on the date of application:

Provided that no such application shall be presented or be maintainable if a suit for recovery of the debt is pending.

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(19) *Perraju* v. *Somanna*, C.R.P. 184/44, (1944) 2 M.L.J. (N.R.C.) 13 (1).
(20) *Srinivasa Rao*, v. *Rangayya* C.R.P. 30/45, 59 L.W. (S.R.C.) 10 (2).
(21) *Venkataswamy Naidu* v. *Nagireddi* 59 L.W. 14 : (1946) M L.J. 5 : 1946 M.W.N. 25 : 225 I.C. 127.

Explanation.—The Court having jurisdiction under this section shall be the Court which would have jurisdiction to entertain a suit for the recovery of debt as unscaled.

(2) The provisions of sub-S. (1) shall apply also to any person claiming to be such an agriculturist, who contends any such debt due by him has been discharged.

(3) All persons who would have been necessary parties to a suit for the recovery of the debt shall be impleaded as parties to the application under sub-S. 1 or under that sub-section read with sub-S. 2.

(4) (*a*) When any such application is made, the Court shall first decide whether the debtor was such an agriculturist or not, and if it finds that he was such an agriculturist, pass an order declaring the amount due by him or declaring that the debt has been discharged, as the case may be.

(*b*) The Court shall dismiss the application if it finds that the debtor was not such an agriculturist.

(5) At any time after passing an order under clause (*a*) of sub-S. 4, the Court shall, on payment by creditor of the court-fee payable on a suit for the amount declared due to him, grant decree to the creditor for such amount :

Provided that the creditor may on his application be granted a decree for an amount less than that declared due to him on paying the appropriate court-fee.

(6) The Court may order that the court-fee, if any, paid by the creditor under sub-S. (5) shall be paid by the debtor in addition to the amount decreed.

(7) If the debtor pays into the Court the amount declared to be due under clause (*a*) of sub-S. (4) or the amount of the decree granted under sub-S. (5) together with the costs, if any, ordered to be paid under sub-S. (6) the Court shall grant to the debtor a certificate that the debt has been discharged.

(8) The procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits shall, as far as may be, apply to the application under this section.

(9) No Court shall entertain a suit by a creditor for the recovery of a debt—

(i) If an application has been made under sub-S. (1) in respect of such debt to a Court having jurisdiction and is pending in such Court ; or

(ii) if a Court having jurisdiction has passed an order under clause (*a*) of sub-S. (4) in respect of such debt.

(10) In computing the period of limitation prescribed for a suit by the creditor for the recovery of debt, the time if any, during which the Court was prevented from entertaining the suit by virtue of the provision contained in clause (i) of s.-S. (9) shall be excluded.

S. 19-A.—Scope.—This section is added by the Amendment Act XV of 1943 as a matter of substantive provision for scaling down non-decretal debts which hitherto have been dealt with under rule 2 framed in pursuance of the rule-making power contained in S. 28.

Crucial dates.—The crucial dates when the debtor should be an agriculturist are 1–10–1937 and 22–3–1938. It is not necessary that he should continue to be an agriculturist till the time when the matter comes before the Court. Under rule 2 as it stood, it is doubtful whether he should be an agriculturist on 1–10–1937 and 22–3–1938.

This section deals with debts incurred before 22–3–1938, as S. 13 deals with debts incurred after that date.

Sub-s. (1) : Jurisdiction.—The Court which would entertain the suit for recovery of the debts as unscaled has jurisdiction to entertain an application under this section. An application lies for declaration of the amount due as well as for a declaration that it was discharged.

Sub-s. (2)—Whatever may be the position when a debtor seeks to resist an application by the creditor under rule 2 (2) or this sub-section, he cannot ask the Court for the declaration of the amount of debt unless he concedes that there is a subsisting debt upon which the provisions of the Act can operate. Court cannot go into a claim by the debtor that the debt has become unenforceable by operation of the Law of Limitation.[22] When the debtor alleges that there is a partial failure of consideration and that a payment which ought to have been appropriated to the suit debt has been wrongly appropriated to another debt, the Court should not make a complete adjudication of the amount of debt due by applying provisions of the Act to actual figure reached

(22) *Subbarao* v. *Seshayya*, 55 L.W. 693 : (1942) 2 M.L.J. 551 : (1942) M.W.N. 696 : 1943 M. 7 : 285 I.C. 396.

after taking into account the plea of failure of consideration or mis-application of payments.[23]

Sub-s. (3).—All parties necessary to be impleaded to a suit for recovery of debt shall be impleaded to the application. Thus according to O. 34, r. 1 of C.P.C., all persons interested in the right of redemption or in the mortgage-security shall be joined to an application under this section.

Sub-s. (5)—This is new and not covered by rules framed under S. 28 of the Act. This enables the creditor to be granted a decree on his paying the requisite court fee.

Sub-s. (6)—This provision for addition of the court fee to the decreed amount is only a consequential provision made for inclusion of costs.

Sub-s. (7)—The debtor is entitled to get a certificate as to the discharge of the debt on his depositing into Court the declared or decreed amount together with costs.

Sub-s. (8)—This clause makes procedure laid in C.P.C. for trial of suits applicable, as far as it can be, to the applications under this section.

Dismissal for default.—When the petitioner does not appear after the Advocate reports no instructions on adjournment being refused, the Court should apply the provisions of O. 9, r. 8 of C.P.C. and dismiss the petition. The Court has no power to make an order as though on merits in the absence of petitioner and give a declaration of the amount due under the debt. When an application is made to scale down the debt, a judicial enquiry must be made and the procedure in the Code of Civil Procedure for trial of suit shall, as far as may be, apply to applications under S. 19-A.[24]

Sub-s. (9)—This clause precludes the entertainment of suits by creditors for recovery of the debts during the pendency of applications under this section by the debtors. The rule 8 which hitherto applied, precludes the sustainability of the application after the filing of the suit by the creditor. Further a suit is prohibited after the Court passed an order under sub-S. 4 (*a*). Where the amount due on mortgage was determined under the rules framed under the Act by debtor's application and subsequently after insertion of S. 19-A, suit is filed by mortgagee for recovery of the amount as determined. Right of suing which the mortgagee had, prior to the Amendment Act, is not extinguished by it, and the contention that it was open to mortgagee to avail himself of the new provisions of S. 19-A and that accordingly he was precluded under sub-S. (9) from maintaining the suit is unsustainable[25].

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(23) *Chendrakaladher Rao* v. *Nagapotha Rao*, 57 L.W. 283 : (1944) 2 M.L.J. 229 : 1944 M.W.N. 259 : 1944 M. 369 (1) : 221 I.C. 41.

(24) *Guruviah* v. *Muniammal* A.A.O. 382/46 : 60 L.W. (S.R.C.) 102 : (1947) 2 M.L.J. (N.R.C.) 38 : (Bell and Govindarajachary, JJ.)

(25) *Abubukkar Maraikayar* v. *Ramaswamy Iyer*, 59 L.W. 147 : (1946) 1 M.L.J. 136 : 1946 M.W.N. 152 : 1946 M. 335.

Sub-s. (10)—This makes provision for excluding the period of pendency of the application by debtor in computing the period of limitation prescribed for a suit for the recovery of the debt, as it is just and reasonable, that creditor should be given that further period during which he is debarred from filing the suit by virtue of sub-S. 9, clause (*i*).

Compensation money not to be deducted.—Compensation money in respect of acquisition of part of hypotheca paid into Court in execution of money decree is not deductible from the mortgage.[25]

Saving of certain orders.—S. 4 of the Amendment Act XV of 1943 saves orders passed by a Court before the commencement of the Act, *i.e.*, 4–8–1943, dismissing applications for declaration of the debt due to a creditor and as to its discharge on the ground, that a suit for recovery of the debt was filed, from being questioned or reopened in any Court.

Retrospective Effect.—S. 5 of the Amendment Act gives retrospective effect to the amendment as from 27–10–1939. The passing of Amendment Act, even though it changes the law with retrospective effect, is not a sufficient reason for re-opening matters which have already been decided on the basis of the law as it stood before amendment.[26]

Refund of Court fee paid on plaints in suits filed for recovery of debt filed in ignorance of an application filed under the Act.—When a suit is filed for recovery of a debt in ignorance of an application filed earlier for declaration of the amount of debt due, under sub-S. (1) of S. 19-A of the Act, and the suit is rejected in pursuance of sub-S. (9), the value of the stamp on the plaint shall be refunded on presentation of an application before the Collector of the district in which the Court that rejected the suit is situated together with a certificate from the Judge or Officer who dismissed the suit that it was dismissed under the circumstances above described.[27]

Stay of execution proceedings.

20. Every Court executing a decree passed against a person entitled to the benefits of this Act, shall, on application, stay the proceedings until the Court which passed the decree has passed orders on an application made or to be made under S. 19 :

Provided that where within 60 days after the application for stay has been granted the judgment-debtor does not apply to the Court which passed the decree for relief under S. 19 or where an application has been so made and is rejected, the decree shall be executed as it stands,

(26) In, re *Vasudevan*, 57 L.W. 20 : (1944) 1 M.L.J. 15 : 1944 M.W.N. 50 : 1944 M. 238.

(27) G.O. No. 2955, Home, dated 13-11-1943, in notification No. 1373 in the *Fort St. George Gazette*, Part I, page 1049, dated 7-12-1943.

notwithstanding anything contained in this Act to the contrary.

Explanation.—The expression 'the Court which passed the decree' shall have the same meaning as in the Code of Civil Procedure, 1908.

NOTES

Section 20 applies to persons entitled to the benefits of Act.—Under S. 20 the Court has to be satisfied that the applicant is entitled to the benefits of the Act. If, on the materials adduced, the Court is not so satisfied, the dismissal of the application would be the correct order.[28] The Court is bound, if it is satisfied that the person making the application is entitled to the benefits of the Act, to stay the execution proceedings in order to give the judgment-debtor an opportunity to have the decree modified by the Court which passed it. If an application is not put in within 60 days or an application under S. 19 is dismissed, the Court can proceed with the execution proceedings.[29]

ILLUSTRATION

Where a decree is against a joint family as such which owns property assessed to house-tax on the basis of an annual rental value exceeding Rs. 600 within two years preceding 1-10-1937, no member of it can be separately held to be an agriculturist. An application under S. 20 does not lie.[30]

Section 20, Explanation.—Section 37 of the Code of Civil Procedure defines the Court "which passed a decree" as follows:—The expression "Court which passed a decree" or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include, (*a*) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and (*b*) where the Court of first instance has ceased to exist or have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit".

Scope of the enquiry is summary.—The enquiry contemplated by S. 20 is an enquiry of summary kind and all that is necessary is that the applicant should show the Court that *prima facie* he is entitled to the benefits of the Act.[31] On the question whether the debtor is an agriculturist within the meaning of S. 19, an order under S. 20 which is of summary nature

Res judicata.

(28) *Markendeswara Swami* v. *Satti Raju*, (C.R.P. 1838/39), (1941) 1 M.L.J. (N.R.C.) 56.

(29) (C.R.P. 490/1939), (1940) 1 M.L.J. (N.R.C.) 29.

(30) (C.R.P. 1146/1939), 50 L.W. (S.R.C.) 8.

(31) *Swaminatha Odayar* v. *Srinivasa Iyer*, 50 L.W. 411: (1939) 2 M.L.J. 495: 1939 M.W.N. 910: 1939 M. 942.

does not operate as *res judicata*, and hence an independent enquiry should be made on that question in an application under S. 19.[32]

Proceedings in execution.—Only proceedings in execution will be stayed under S. 20.

ILLUSTRATIONS

(1) In execution of a simple money decree the judgment-debtor's properties were purchased before 1-10-1937 by the decree-holder and the sale was confirmed after 1-10-1937. An application to scale down the amount after setting aside the sale is filed. Another application to stay delivery is filed. As execution is not at an end until delivery is actually effected, S. 20 is applicable not only to a case arising under S. 19 but also S. 23.[33]

(2) Where an order appointing a receiver is made in a suit and not in execution it cannot be stayed in pursuance of an application under S. 20.[34]

(3) The fact that an application by a judgment-debtor under S. 20 has been filed, does not prevent the Court, at the instance of the decree-holder, from passing an order under O. 21, r. 43, Civil Procedure Code, directing the property to be sold and the proceeds deposited into Court on the ground that the property is liable to decay.[35]

(4) Proceedings under O. 21, r. 90 are proceedings in execution necessarily to be stayed when an order under S. 20 has been passed until disposal of a pending application under S. 19. The fact that a sale held before 1-10-1937 cannot be set aside under Act does not justify the Court in going on with proceedings relating to such sale, when all execution proceedings have been stayed.[36]

(5) A decree holder was given leave to bid and set off a sale in execution held after the Act. Before the sale was confirmed the judgment-debtor filed applications under Ss. 19 and 20 and in due course stay was ordered. In spite of the stay, the debtor was permitted to give up the balance due under the decree, and record satisfaction by reason of the sale and petition under S. 19 was dismissed on the ground that there was no longer a decree debt subsisting. It was held by the High Court that when the execution proceedings were stayed and peititon under S. 19 was filed at the time when there is a subsisting decree debt, the Court is obliged to apply the procedure laid down in S. 19 and scaled down that decree. Though there is no procedure for setting aside the sale held after the Act came into force, sale cannot

(32) *Sobhanadri Apparao* v. *Venkata Appayya Rao*, (C.R.P. 2042/1939) 53 L.W. (S.R.C.) 60: (1941) 1 M.L.J. (N.R.C.) 54: 1941 M.W.N. (N.R.C.) 52 (2).

(33) *Lakshminarasimha Rao* v. *Munnayya*, 52 L.W. 244: (1940) 2 M.L.J. 234: 1940 M.W.N. 760 (1).

(34) (C.R.P. 793/1938), (1938) 2 M.L.J. (N.R.C.) 62.

(35) *Venkatappayya Rao* v. *Rama Rao*, (C.R.P. 971/1938), 52 L.W. (S.R.C.) 32: (1940) 2 M.L.J. (N.R.C.) 87.

(36) *Velayudha Mudali* v. *Chengama Naidu*, 55 L.W. 531: (1942) 2 M.L.J. 311: 1942 M.W.N. 550: 1942 M. 727.

be confirmed regardless of the effect of the scaling down of the application. If the scaling down results in the decree debt being reduced to something below the purchase price, the debtor purchaser will have to put into the Court the balance before the sale is confirmed. If, instead, he elects to have the sale set aside that is his own business. The Court has no power to treat as satisfied the decree which at the time of stay was satisfied and allow the set off to be completed on the basis of the decree which the Court had to scale down.[37]

Who can apply.—Any person entitled to the benefits of the Act against whom the decree is being executed can apply under S. 20 for staying the proceedings, notwithstanding the fact that he is in any manner liable either personally or on account of possession of the properties.[38]

ILLUSTRATION

Even though the decree was passed against the father, son must be deemed to be a party thereto by reason of his interest in the family properties having been represented by father as manager and he can apply for staying execution proceedings.[39]

A mortgage decree had been passed against the joint family to which petitioner belonged but on the date of the decree petitioner was not born. Negativing the contention that an order for stay can only be granted to a person party to a decree, His Lordship Happel, J., held that S. 20 refers to a decree passed against a person entitled to the benefits of the Act, and as the petitioner is entitled to the benefits of S. 19, his application for stay must be granted.[40]

Insolvent can apply.—The equity of redemption in certain properties was advertised for sale by Official Receiver. The insolvent filed an application on 14–9–1938 without impleading Official Receiver, for a declaration that he is an agriculturist and that his debts should be scaled down. On 27–9–1938, he applied for a stay of sale under S. 20. The stay was refused and the sale was held on 29–7–1938. The insolvent filed an application under S. 68 of the Provincial Insolvency Act to set aside the sale. The Insolvency Court held that the application was not maintainable in Law as the insolvent cannot be a person aggrieved within the meaning of S. 68.[41] Though it is desirable that Official Receiver be made a party to such applications, the proceedings are not void owing to non-joinder of Official Receiver thereto.[42]

(37) *Periaperumal Ammal* v. *Veluchami Reddi* (1942) 2 M.L.J. (484) : 1943 M. 25 : 205 I.C. 631.

(38) *Vasantarao* v. *Narayanaswami Ayyar*, 50 L.W. 636 : (1939) 2 M.L.J. 745 : 1939 M.W.N. 1077 : 1940 M. 95.

(39) *Vasantarow* v. *Narayanaswami Ayyar*, 50 L.W. 636 : (1939) 2 M.L.J. 745 : 1930 M.W.N. 1077 : 1940 M. 95.

(40) *Harnath* v. *Bhavanarayana*, 61 L.W. 631 : (1948) 2 M.L.J. 164.

(41) *Krishna Rao* v. *O.R., East Godavari*, 54 L.W. 513 : (1941) 2 M.L.J. 690 : 1941 M.W.N. 947 : 1942 M. 254.

(42) *Sivaraman* v. *Palaniswami*, 57 L.W. 334 : (1944) 1 M.L.J. 427 : 1944 M. 455 : 1945 M. 188 (I.L.R.)

Successive applications.—Where an application under S. 20 has been filed by a judgment-debtor for stay of execution on the representation that an application under S. 19 will be filed by him afterwards, and even though stay is granted, the judgment-debtor did not file within time an application under S. 19 but subsequently his son filed two applications one under S. 20 and another under S. 19. When an application under S. 20 has been granted, a subsequent application by another of his family under S. 20 is not maintainable. "Any member of the family" in S. 19 means only one of the members of the family on behalf of all its members and cannot be construed as entitling every member of the family to file an application in succession.[43] There cannot be a number of successive applications for stay under S. 20 by the different debtors. There shall be only one stay of which all the judgment-debtors should take advantage simultaneously. The proviso to S. 20 appears to contemplate only one application to enable any one of the judgment-debtors to apply under S. 19.[44]

Successive applications.—Judgment-debtor obtained stay under S. 20 and on the last day of limitation filed an application under S. 19 which was rejected as not being duly signed and verified. Some five months later his son came forward with the present application under S. 19. The incompetent application by father must be regarded as no application at all, and there remaining a stay obtained by father who must be regarded as representing the family for the purpose and no application at under S. 19 having been filed in time, the present application should be rejected as barred.[45] Whether an execution proceeding is taken in the Court which passed the decree or in some other Court, if a stay is ordered under S. 20, an application for relief by judgment-debtor under S. 19 must be filed within 60 days of order and the fact that the application under S. 20 was filed by junior member and application under S. 19 by manager of a joint family would not take away the bar of S. 20-[46].

Co-judgment-debtors.—There is nothing in S. 19 or S. 20 which compels all the co-judgment-debtors who have claims as agriculturists to join in an application for stay or scaling down filed by another judgment-debtor as it is quite possible for the case of a judgment-debtor who has not joined in that application being different entitling him to apply separately for the relief under the Act.[47]

(43) *Gaja Gopireddi* v. *Pulla Ramireddi*, 49 L.W. 620 : (1939) 1 M.L.J. 888 : 1939 M.W.N. 441 : 1939 M. 500 : I.L.R. 1939 M. 530 : 183 I.C. 865; *Sundara Reddiar* v. *Alagappa Chettiar*, 52 L.W. 431 (1) : (1940) 2 M.L.J. 466 : 1940 M.W.N. 951 : 1941 M. 100 (2); *Govinda Mudali* v. *Subbaraya Ayyar*, (C.R.P. 1786/1939), (1941) 1 M.L.J. (N.R.C.) 43.

(44) *Venkatachariar* v. *Srinivasa Varadachariar*, (C.R.P. 576/1939), (1941) 1 M.L.J. (N.R.C.) 37 : 1941 M.W.N. (N.R.C.) 27.

(45) C.R.P. 383/43, 54 L.W. (S.R.C.) 2.

(46) *Sankaram Nambisan* v. *Thachantayya Kaimal*, 58 L.W. 632 : (1945) 2 M.L.J. 535 : 1945 M.W.N. 754 : 1946 M. 158.

(47) *Nagasundaram* v. *Mathurbhootam*, 53 L.W. 158 : (1941) 1 M.L.J. 218 : 1941 M.W.N. 204 (1) : 1941 M. 556.

Proviso.—The proviso implies that the judgment-debtor would be debarred from making an application under S. 19 both in the cases where he fails to apply within 60 days of the grant of stay, and where an application is made and rejected.

Limitation.—If the period mentioned in S. 20 expires on a day when the Court is closed, the application under S. 19 may be made on the day on which the Court re-opens. "Section 29 of the Indian Limitation Act applies, *inter alia*, S. 4 to a special or local law unless such law expressly excludes S. 4. So long as a debt is enforceable, a debtor has a right to apply at any time for scaling down, except in the circumstances contemplated by S. 20. In such circumstances there is the ordinary period of limitation." "Even if the period of 60 days be not regarded as a period of limitation for an application (under S. 19) the result would be the same. His right to apply must be taken to accrue *de die in diem.* His application would thus be a proceeding to which S. 11 of the Madras General Clauses Act applies. Under this section the petitioner was clearly entitled to make his application on the re-opening day of the lower Court after summer holidays."[48] The period of limitation prescribed in the proviso begins to run with the grant of the stay and the question of limitation does not arise when there is no grant of stay.[49]

Period cannot be extended.—The order of the District Munsiff in disposing of the stay application under S. 20 by noting that execution is stayed for two months will not extend the period from 60 days to 2 months, within which an application under S. 19 should be filed.[50]

Delay in filing application under S. 19.—Section 5 of the Indian Limitation Act does not apply to this Act and so, when an application under S. 19 is filed after 60 days, the delay cannot be excused.[51]

The purpose of S. 20 is to give judgment-debtor a chance of making an application under S. 19, where no application for scaling down has been made even long after the filing of application under S. 20 for stay and the debtor prefers to go on prosecuting his application for stay alone, the High Court will not interfere with an order dismissing stay application [52].

Delay, no excuse: no waiver.—That the execution of the decree had been prevented by considerable delay in deciding the petition preferred under O. 21, r. 90 of C.P.C. is no ground for refusing stay to which the debtor is entitled under S. 20. The confirmation of sale after the Act came into force would render the application to be filed

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(48) *Kumaraswami Pillai* v. *Tiruvengadatha Ayyangar*, 49 L.W. 762 : (1939) 2 M.L.J. 308 : 1939 M.W.N. 521 : 1939 M. 613 : I.L.R. 1939 M. 886.

(49) *Saraswathi Ammal* v. *Arbusa Saheb*, 53 L.W. 227 : (1941) 1 M.L.J. 296 : 1941 M.W.N. 270 : 1941 M. 433 ; *Hanumantha Rao* v. *Basavayya*, (C.R.P. 756/1941), (1941) 1 M.L.J. (N.R.C.) 75.

(50) *Veera Muthu Padayachi* v. *Sivasankara Mudaliar*, (C.R.P. 1104/1939), (1940) 2 M.L.J. (N.R.C.) 29.

(51) (C.R.P. 623/1939), 50 L.W. (S.R.C.) 79.

(52) *Ramaswamy Padayachi*, in re C.R.P. 1944/41, (1941) 2 M.L.J. (N.R.C.) 49.

under S. 19 infructuous and therefore stay should be granted.[53] The Act does not compel a judgment-debtor to make an application for stay of an execution at an early stage and simply because he failed to ask for stay in prior execution application, he cannot be deemed to have waived his rights to apply later. He can make his application at any stage and even though it be made not in good faith, the terms of S. 20 leave no discretion to the Court to reject or make a conditional order.[54]

Execution of decree as it stands.—Whereafter stay was granted under S. 20, nothing was done for more than a year by judgment-debtor to get the decree scaled down, but subsequently an application by him under S. 19, the decree was amended in spite of opposition of the debtor. After such amendment, it is not open to debtor to execute the decree as it stands. Words " the decree shall be executed as it stands " have reference to the frame of the decree at the time of execution, having regard to any changes it might have undergone in the trial court, and not to the frame of the decree as it stood at the time of stay order.[55]

Conduct of judgment-debtor immaterial.—Where an execution sale held on 17-3-1938 was set aside on an application presented by judgment-debtor under S. 23 on 28-4-1938 and he did nothing in the matter till a year later when he applied for stay of sale under S. 20 when debtor again brought the property to sale. Under S. 20 Court has no discretion to refuse stay on the ground that the conduct of the judgment-debtor has been obstructive or to impose conditions for granting stay.[56]

Calculation of 60 days.—On a mortgage of 1931, the appellant obtained a mortgage decree against the respondent on 20-7-1935. On 15-7-1940 during the pendency of a execution application the judgment-debtor applied under S. 20 for a stay of execution proceedings and on 17-7-1940, the Court passed a order of *ad interim* stay pending the hearing of the application under S. 20. The application was heard on 25-7-1940 when an order for stay was passed under S. 20. The application under S. 19 filed on 23-9-1940 is within time as it is within 60 days from 25-7-1940 when the order for stay was passed, though the interim order was passed more than 60 days before it.[57]

Interim stay.—The procedure of executing Court in granting an interim stay followed by an absolute order is not contemplated by

(53) *Padmanabhu* v. *Narasimhan*, C.R.P. 132/41, (1941) 2 M.L.J. (N.R.C.) 48 (1).

(54) *Sambanda Chetty* v. *Muthu Chetty*, 55 L.W. 251 : (1942) 1 M.L.J. 335 : 1942 M. 185 : 1942 M. 398 (1).

(55) *Chinnaswami Chetty* v. *Parvathiah Chetty*. 55 L.W. 718 (2) : (1942) 2 M.L.J. 589 : 1942 M.W.N. 694 : 1942 M. 757.

(56) *Dharmayya* v. *Yenadi Reddi*, 55 L.W. 721 : (1942) 2 M.L.J. 585 : 1942 Mad. 731 : 1942 M.W.N. 664.

(57) *Sivaraman* v. *Palaniswamy*, 57 L.W. 334 : (1944) 1 M.L.J. 427 : 1944 M.W.N. 410 : 1944 M. 455 : I. L.R. 1945 M. 188.

S. 20 and hence once a stay has been granted, limitation for application under S. 19 will begin to run.[58]

Re-presentation.—Where a petition has been filed within the period fixed by S. 20 the fact that the period has been exceeded by delay in re-presenting the petition, is no ground for dismissing it if there is sufficient explanation of the delay in re-presentation.[59]

Dismissal for default.—Dismissal of an application under S. 20 for default can only have the effect of deciding that no stay is to be granted,[60] but does not amount to a binding adjudication that the applicant is not entitled to the benefits of the Act. An application under S. 20 is heard by executing Court whereas an application under S. 19 is heard by a Court which passed the decree. When an applicant allows his application under S. 20 to be dismissed for default, he is clearly abandoning only his right to a stay." So S. 20 does not contemplate any final decision on the question of the right of the applicant to apply under S. 19. That abandonment may be due to many causes apart from the Act. It is impossible to hold that when an agriculturist allows his application under S. 20 to be dismissed because it is not necessary, such a dismissal would bar a substantive application under S. 19.[61]

"Rejected".—"Rejected" means rejection on any ground whatever including default of appearance.[62]

Procedure for Decree holder.—The procedure under S. 20 is open to a decree holder as much as to a judgment-debtor as the procedure under S. 19 is open either to debtor or judgment-debtor.[63]

Court passing decree transferred to another province.—Both the preliminary and final decrees on the basis of mortgage deed were passed by Sub-Judge, Berhampore. A portion of the Ganjam District was transferred to and formed part of the newly constituted province of Orissa, and the Sub-Judge's Court at Berhampore was in the area so transferred. The remaining portion was made a part of Vizagapatam district and retained in the Madras Province. All the properties covered by the final decree were situated within the area retained in Madras Presidency and fell within the jurisdiction of Sub-Judge's Court at Chicacole. The Court of Sub-Judge at Chicacole must be, for purposes of new and independent applications and which are not those of execution, in view of the transfer of the area in which the

(58) *Nataraja Gramani* v. *Sivakolundu Gramani*, 55 L.W. 844: (1942) 2 M.L.J. 424 : 1942 M.W.N. 790 : 1942 M. 729.

(59) (C.R.P. 880/1939), 50 L.W. (S.R.C.) 82.

(60) *Hanumantha Rao* v. *Basavayya*, (C.R.P. 756/1941), (1941) 1 M.L.J. (N.R.C.) 75.

(61) *Saraswathi Ammal* v. *Arabusa Saheb*, 53 L.W. 227 : (1941) 1 M.L.J. 206 : 1941 M.W.N. 270 : 1941 M. 433.

(62) *China Venkatasuryanarayana* v. *Subbayya*, 58 L.W. 531 : (1945) 2 M.L.J. 374 : 1945 M.W.N. 709 : (1) 1946 M. 78 : 223 I.C. 407.

(63) *Seshayya* v. *Somasundara*, C.R.P. 1476/40, 55 L.W. (S.R.C.) 17 (2) (b).

mortgaged properties are situate, regarded to be the Court to which the business of the Court of Sub-Judge of Berhampore was transferred and application under S. 19 should be made to the Court of Sub-Judge at Chicacole. The Court of Sub-Judge, Berhampore, is not competent to deal with such an application and if the execution proceedings are pending in the Court of Sub-Judge, Berhampore, application under S. 20 can be properly made to it as it is to be made in a pending proceeding in execution. [64]

No notice to the decree-holder necessary.—" A reading of S. 20 by itself seems to us to indicate clearly that the only question which arises under that section is a question between the executing Court and the applicant and not a question between the parties to the decree." The Court can stay the execution proceedings without notice to the decree-holder."[65]

Appeal or Revision.—As the question under S. 20 is one between the Court and the applicant and not one between the parties within the meaning of S. 47, no appeal lies from an order refusing to stay execution of the decree.[66] No appeal lies against an order passed under S. 20.[67] Hence only revision lies against the orders under S. 20. A stay under S. 20 operates until the Court which passed the decree has passed orders on an application to be under S. 19; and when the later application is dismissed, that automatically vacates the stay. An appeal before Madras Act XV of 1943 came into force, being incompetent under the Act as it stood then, would not become competent by reason of the said Act XV of 1943 providing for an appeal having come into force prior to disposal of the appeal. [68] There is no right of appeal from the order dismissing the application. [69].

Order dismissing stay petition on the ground that judgment-debtor is not an agriculturist relates to execution, discharge or satisfaction of a decree within the meaning of S. 47, C.P.C. and an appeal lies under S. 96, C.P.C. [70].

Application by minor.—As the application under S. 19 is not one for execution a minor judgment-debtor cannot get the benefit of extension of the period within which he has to apply under S. 19 (*i.e.*) 60 days, under S. 6 of the Indian Limitation Act.

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(64) *Narasimharaju* v. *Brindavan Sahu,* (1943) 2 M.L.J. 31 : 1944 M. 617.

(65) *Swaminatha Odayar* v. *Srinivasa Iyer,* 50 L.W. 411 : (1939) 2 M.L.J. 495 : 1939 M.W.N. 910 : 1939 M. 942.

(66) *Swaminadha Odayar* v. *Srinivasa Iyer,* 50 L.W. 411 : (1939) 2 M.L.J. 495 : 1939 M.W.N. 910 : 1939 M. 942.

(67) (C.M.A. 349/1939 and C.R.P. 1416/1939), 53 L.W. (S.R.C.) 82.

(68) *Abdul Kasah Rowther* v. *Abdul Rahim Rowther* 58 L.W. 216: (1945) 1 M.L.J. 480 : 1945 M. 304.

(69) *Erram Reddi* v. *Surappa* 55 L.W. 157 : (1942) 1 M.L.J. 314 : 1942 M.W.N. 141 : 1942 M. 418.

(70) *Adaikappa Chettiar* v. *Chandrasekhara Thevar,* 61 L.W. 52 : (1948) 1 M.L.J. 41 : 1948 M.W.N. 15 : 1948 P.C. 2.

Adjudications in insolvency.

21. (1) Nothing contained in this Act shall apply to the debts payable by any person who has been adjudicated an insolvent, if, prior to the coming into force of this Act, a dividend has been declared out of his assets.

[ ] Deleted by Act XXIII of 1948.

[If a dividend has not been so declared, this Act shall apply to the debts payable by such person if he would have been an agriculturist within the meaning of this Act but for his adjudication in insolvency.]

Inserted by Sec. 11 of Act XXIII of 1948.

(2) If a dividend has not been so declared, the Court shall, on application made by insolvent debtor, the Official Assignee or Official Receiver in whom the property of such debtor has vested or any other person interested, apply the provisions of this Act to the debts payable by the insolvent debtor if he would have been an agriculturist within the meaning of this Act but for his adjudication in insolvency.

(3) If the application aforesaid is not made by the Official Assignee or Official Receiver, he shall be impleaded as a party thereto.

NOTES

The Select Committee's observations in respect of this section are :—"This clause refers to adjudications in insolvency. The Committee thinks that the benefits of this measure should be extended to debtors against whom an order of adjudication has been made but where assets have not yet been distributed.

For various reasons, an agriculturist might be taken to the Insolvency Courts and to exclude him from the benefits of the Bill, till a final dividend was declared, was not fair. The scaling down of such debts would also benefit the creditors to some extent."

Old Law :—The 2nd part of the section.—"If a dividend has not been declared but for his adjudication" is added by an amendment on account of the fact than an agriculturist on his adjudication would cease to be an agriculturist, having no property at all all his property having become vested in the Official Receiver or the Official Assignee as the case may be.

This second part of the section is deleted and sub-section 2 is substituted in its place by the Amendment Act of 1948. This enables agriculturist insolvents to apply for scaling down of debt proved in insolvency proceedings.

Declaration of Dividend.—The section confers the benefits of the Act on an insolvent, if a dividend has not been declared out of his assets. If the assets are distributed in one dividend, there is no difficulty in applying the section. But when there are more dividends than one declared, the language presents a difficult question whether this section contemplates first dividend or the final dividend. The words "out of his assets" furnish a clue to the meaning of the word "dividend." The words "out of his assets" mean the whole assets and not merely a part thereof and so the dividend must be construed as *final* dividend. If a final dividend is declared (*i.e.*) when the distribution is completed, the insolvent ordinarily gets discharged and there would be no debts and consequently no need for applying for relief under the Act.

Annulment of insolvency.—On an insolvency petition filed on 6-7-1932 a debtor was adjudicated insolvent four months later. The insolvency was not prosecuted and on 1-11-1938 the adjudication was annulled and under S. 37 of Provincial Insolvency Act the properties were directed to vest in Official Receiver. In 1939, the debtor filed an application for review of the order and also prayed for scaling down the debt due to a creditor. The creditor had filed a suit with the leave of insolvency court on 21-11-1939 wherein also the debtor pleaded that he was entitled to relief under the Act. The right to scaling down was negatived by trial court on the ground that the debtor had no saleable interest in agricultural land on 1-10-1937 and that by reason of the annulment of insolvency, he was not entitled to call in aid S. 21 and the suit was decreed. The estate having vested in Official Receiver, the debtor was not an agriculturist on 1-10-1937 or on date of commencement of Act. He cannot get relief under Act unless he comes under S. 21 for which it is necessary that the debtor should be an insolvent at the time of application. The annulment **relegates** the debtor to a position which he occupied before adjudication except in so far as vesting order places the residue of property at the disposition of the appointee for the benefit of creditors.[71]

Discharge.—When, even after discharge, properties of insolvent continue to vest in Official Receiver for satisfying the debts proved in the insolvency, the debtor insolvent cannot claim scaling down of debt under Act so as to relieve the burden on estate in the hands of Official Receiver [72]

Insolvent's interest alienated.—Where long before coming into force of the Act, a debtor had alienated all her properties and had been adjudicated insolvent, it cannot be said that she would have been an agriculturist but for her adjudication in insolvency so as to bring into force S. 21. The mere fact that in 1941 Official

(71) *Venkataramayya* v. *Pundarikakhudu*, 55 L.W. 242: (1942) 1 M.L.J. 491: 1942 M. 523: 1942 M.W.N. 279.

(72) *Somasundaram* v. *Official Receiver, South Arcot* 59 L.W. 507: (1946) 2 M.L.J. 209: 1946 M.W.N. 594: 1947 M. 95.

Receiver was able to get the alienations set aside for the benefit of creditors will not create a retrospective saleable interest in insolvency which could be presumed to have been vested in Receiver throughout the period of insolvency.[73]

Sub-section (3).—This is newly added by the Amendment Act XXIII of 1948 for the purpose of compelling the impleading of Official Receiver or Assignee as a party to the application.

Insolvency of one of the debtors.—If a debt is payable by more than one person, the insolvency of one cannot deprive the other person liable for the debt of his right to apply for relief under the Act if he otherwise satisfies the provisions of this Act.[74]

ILLUSTRATIONS

(1) Where a decree is against the father as manager of joint family, the son must be deemed to be a party thereto and declaration of dividend in father's insolvency does not render the said application incompetent in as much as the son continued to be the debtor to the extent of his property.[75]

(2) The purchaser of the insolvent's property subject to the mortgage created by the insolvent, can apply for benefits of the Act if he is an agriculturist.[76]

Official Receiver a necessary party.—Section 21 in its plain terms contemplates an application by a person who would have been an agriculturist but for his adjudication, and to such an application by the insolvent, the Official Receiver in whom the estate vests should be impleaded as a party.[77]

Special provision in the case of certain sales of movable property.

22. Where, in execution of any decree, any movable property of an agriculturist has been sold on or after the 1st October, 1937, any judgment-debtor may apply to the Court for an order that the provisions of S. 8 or 9, as the case may be and of Ss. 11 and 12 be applied to the decree, and the Court, shall, if satisfied that the applicant is an agriculturist entitled to the benefits of those sections, apply the same and order the decree

(73) *Venkatasubbamma* v. *Satyanarayanamurthi*, C.R.P. 692/42, (1943) 2 M.L.J. (N.R.C.) 9 (4).

(74) *Vasantharao* v. *Narayanaswami Ayyar*, 50 L.W. 636 : (1939) 2 M.L.J. 745 : 1939 M.W.N. 1077 : 1940 M. 95.

(75) *Bhonsle* v. *Official Receiver, West Tanjore*, 53 L.W. 69 : (1941) 1 M.L.J. 467 : 1941 M.W.N. 95 and vide *Vasantha Rao* v. *Narayanaswami Ayyar*, 50 L.W. 636 : (1939) 2 M.L.J. 745 : 1939 M.W.N. 1077 : 1940 M. 95.

(76) *Suryanarayana* v. *Ramamma*, 52 L.W. 301 : (1940) 2 M.L.J. 291 : 1940 M.W.N. 831 : 1940 M. 808 ; *Subbarayudu* v. *Somayya*, 53 L.W. 229 : (1941) 1 M.L.J. 304 : 1941 M.W.N. 191 (1) : 1941 M. 491.

(77) *Jagannatha Iyengar* v. *Senniveera Chettiar*, 53 L.W. 105 : (1941) 1 M.L.J. 197 : 1941 M.W.N. 271 : 1941 M. 487.

holder to refund any sum received by him on or after the 1st October, 1937, in excess of the amount to which he would have been entitled if the property had not been sold:

Provided that no such order shall be made without notice to the decree-holder and without affording him an opportunity to be heard in the matter.

NOTES

Scope.—This section has been enacted to help the judgment-debtors against sales in execution which the decree-holders have caused to be made after 1-10-1937 so as to knock away the property after the publication of the Bill. The right to relief under this section by reason of the sale of movable property and the right to refund exists only for the excess amount realised by the sale.

In order to invoke the application of this section there must be a subsisting sale.

ILLUSTRATION

When a debtor has deposited under O. 21, r. 89, Civil Procedure Code, the amount necessary to have the sale set aside, and this amount is withdrawn by the decree-holder in full satisfaction, there is no longer a debt to found an application under the Act or a decree to be scaled down. No refund of the amount can be ordered except under the provisions of Ss. 22 to 25 which have no application when there is no subsisting sale to be set aside. The fact that the deposit was made on the day when the Act came into force has no bearing, when once it is conceded that the application was made long after the decree had been satisfied.[78]

Sales of immovable property to be set aside in certain cases.

23. Where in execution of any decree any immovable property, in which an agriculturist had an interest, has been sold or foreclosed on or after the 1st October, 1937, then, notwithstanding anything contained in the Indian Limitation Act, 1908, or in the Code of Civil Procedure, 1908, and notwithstanding that the sale has been confirmed, any judgment-debtor, claiming to be an agriculturist entitled to the benefits of this Act, may apply to the Court within 90 days of the commencement of this Act to set aside the sale or foreclosure of the property, and the Court shall, if satisfied that the applicant is an agriculturist entitled to the

(78) *Thiravia Nadar* v. *Chella Nadar*, 52 L.W. 386 : (1941) 1 M.L.J. 417 : 1940 M.W.N. 911 : 1941 M. 74 (2).

benefits of this Act, order the sale of foreclosure to be set aside, and thereupon the sale shall be deemed not to have taken place at all:

Provided that no such order shall be made without notice to the decree-holder, the auction purchaser, and other persons interested in such sale or foreclosure and without affording them an opportunity to be heard in the matter.

NOTES

Scope.—The section applies if the following requirements are satisfied:—

(A) The sale must be of immovable property in which an agriculturist had an interest.

(B) The sale must be on or after 1-10-1937.

(C) The judgment-debtor must be an agriculturist entitled to the benefits of the Act.

(D) The application must be made within 90 days of the commencement of the Act (*i.e.*,) 22-3-1938.[79]

A. "The property in which an agriculturist had an interest" must refer to the state of affairs at the time of sale and cannot cover a case in which the agriculturist had parted with his interest in the property sold long prior to the sale. Where the property sold belonged to a non-agriculturist, S. 23 will have no application.[80]

It is not the object of S. 23 that any agriculturist debtor may get a sale set aside merely on the basis that in other matters, he might claim the benefits of the Act, when he is entitled to no benefit with respect to the particular liability in respect of which the sale is held.[81]

ILLUSTRATIONS

1. A judgment-debtor whose property is sold in execution does not cease to be its owner capable of selling it effectively under certain conditions so long as he can apply to have the sale set aside, *i.e.*, till the expiry of thirty days from the date of sale. After the expiry of such period the auction purchaser can effectively sell the property purchased even in the absence of confirmation of sale by the Court and the judgment-debtor ceases to have any saleable interest in that property and cannot apply under S. 23.[82]

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(79) *Subba Naicker* v. *Savarimuthu Pillai*, 52 L.W. 646: (1941) 2 M.L.J. 709: 1940 M.W.N. 1121: 1942 M. 73 (2).

(80) *Ramayya* v. *Kotayya*, 54 L.W. 561: (1941) 2 M.L.J. 557; 1941 M.W.N. 879 (2): 1942 M. 102.

(81) *Gopalaswamy Muthuraja* v. *Sethurama Iyer*, C.R.P. 2100/39: 54 L.W. (S.R.C.) 61: 1941 M.W.N. (N.R.C.) 85: (1941) 2 M.L.J. (N.R.C.) 59 (1).

(82) *Ramaswami Ayyar* v. *Komalavalli Ammal*, 52 L.W. 955: (1940) 2 M.L.J. 1055: 1941 M.W.N. 176: 1941 M. 277.

2. Where mortgage property has been sold in execution of the mortgage decree, it is not open to the mortgagor who has previously parted with the equity of redemption, to apply for setting aside the sale under S. 23 merely because he, as judgment-debtor, has a right to redeem the mortgage. Since such a mortgagor could at best get by redemption only a right to the return of the document with the endorsement of discharge and he is to hold it as trustee for the vendee, this right of the mortgagor does not amount to an interest in the property sold for purposes of S. 23.[83]

(3) In June 1934 a debtor attached in execution in mortgage debt due to judgment-debtor. On 9-10-1935, while the attachment was pending the judgment-debtor transferred her mortgage right to her daughter. In November 1937, the mortgage right was sold by the Court in execution and was purchased by a stranger. On 7-1-1938 full satisfaction of the decree was recorded. On 15-6-1938 the judgment-debtor and her transferee both joined in an application under S. 23 to set aside the sale. The judgment-debtor was a non-agriculturist and her transferee an agriculturist. The actual judgment-debtor cannot apply under law. The transfer, being in disregard of attachment, is void against claims enforceable under the attachment, and the transferee can be ignored by the decree-holder and the execution can be proceeded with treating the transferor as still being the owner of the properties. There is therefore no property liability on part of transferee to entitle him to apply for scaling down.[84]

B. Sale after 1-10-1937.—The sale must be between 1-10-1937 and 22-3-1938. S. 23 does not apply to a sale held after the Act came into force.[85] S. 23 does not apply to sales before 1-10-1937.[86]

ILLUSTRATIONS

1. Where a Court sale was held before 1-10-1937 and confirmed afterwards, the date of sale for purposes of S. 23 is the date of actual auction at which time the property is by operation of S. 65 of Civil Procedure Code vested in the purchaser by reason of subsequent confirmation.[87]

2. Where a sale was held on 9-6-1937 and was confirmed on 12-7-1937 but the decree-holder purchaser had not taken possession till 11-10-1939 when applications under Ss. 19 and 23 were made, the application under S. 23 was barred and scaling down the decree cannot affect the sale which had become final.[88]

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(83) *Nagarajan* v. *Krishna Ayyar*, (A.A.O. 403/1939), 53 L.W. (S.R.C.) 70: (1940) 1 M.L.J. (N.R.C.) 73.

(84) *Ranganayakulu* v. *Gopayamma* 55 L.W. 170 (2): (1942) 1 M.L.J. 341: 1942 M.W.N. 137: 1942 M. 323.

(85) *Seshayya* v. *Venkata Ramayya*, (C.R.P. 684/1941) 1 M.L.J. (N.R.C.) 80.

(86) (O.S.A. 21/1939) 50 L.W. (S.R.C.) 48.

(87) *Basavayya* v. *Manikyalarao*, 52 L.W. 387: (1940) 2 M.L.J. 340: 1940 M.W.N. 894: 1941 M. 37: (C.M.S.A. 54/1939), 52 L.W. (S.R.C.) 9.

(88) *Veeranna* v. *Silar Baksha* (C.R.P. 277/1940) (1941) 1 M.L.J. (N.R.C.) 36.

3. An execution sale was held in 1935 and a stranger purchased the property. An application to set aside the sale under O. 21, r. 90 was then put in and hence sale was not confirmed. The application was *still pending* when the Act came into force in 1938. The judgment-debtor applied for scaling down the decree amount and it was reduced. Thereupon he deposited the reduced amount to be paid to debtor in satisfaction of the decree, and made the application to set aside the sale on the ground that the decree had been satisfied. Sale before 1-10-1937 could not be set aside under the Act, the effect of an order under it was simply to reduce the amount due to debtor, there being nothing in the Act to indicate that such an order affected the sale held before 1-10-1937, especially when a third party had purchased the property at such sale.[89]

C. **Judgment-debtor entitled to the benefits of the Act.**—An applicant under S. 23 must show that he is an agriculturist judgment-debtor entitled to the benefits of the Act but need not show that he has already applied to the Court for those benefits. It is not essential that the applicant should have actually instituted proceedings under S. 19.[90]

ILLUSTRATIONS

1. Where sales have been held in execution of rent decrees and purchase money is in deposit with the Court, mere holding of sale will not wipe out the arrears. The arrears will remain outstanding until the proceeds of sale are paid to the landholder. Apart from the question whether the judgment-debtors are entitled to the benefits of S. 15 regarding rent, they are clearly entitled to the benefits of the Act under Ss. 8 and 9 regarding interest on costs, and an application under S. 23 lies.[91]

2. A jenmi obtained a decree for arrears of rent and assigned the decree to a stranger who himself purchased the holding of tenant in sale in execution on 6-1-1938 and obtained possession after due confirmation of sale. The tenant's legal representatives applied under S. 23 to set aside the sale. Though the tenant may not be entitled to any benefit under S. 15 as against the assignee decree-holder the decree being for rent with interest and costs the tenant will be entitled to relief under Ss. 8 and 9 of the Act and so an application under S. 23 is maintainable as the tenant is an agriculturist entitled to the benefits of the Act and the sale must be set aside.[92]

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(89) *Narayanaswamy Chettiar* v. *Rudrappa*, 57 L.W. 67: (1944) 1 M.L.J. 110: 1944 M.W.N. 75: 1944 M. 314; *Sankara Sastry* v. *Varaprasad*, 60 L.W. 307.

(90) *Ramaswami Gounden* v. *Timmappa Chettiar*, (A.A.O. 126/1940): (1940) 2 M.L.J. (N.R.C.) 83.

(91) *Venkataratnam* v. *Surya Rao*, 53 L.W. 86: (1941) 1 M.L.J. 156: 1941 M.W.N. 96: 1941 M. 500.

(92) *Beeya Thumma* v. *Ibrayi*, (C.M.S.A. 483/1939), (1940) 2 M.L.J. (N.R.C.) 44 (2).

Decree satisfied.—The person who makes an application under S. 23 must be a judgment-debtor at the time he makes the application and if at that time satisfaction of the decree has been entered up and the decree had been wiped out, the fact that the applicant was a judgment-debtor would not make the application maintainable.[93]

When the sale in execution of a decree was confirmed on 15-11-1947 and full satisfaction recorded no debt is subsisting when the Act came into force and an application under S. 2 will not lie.[94]

When to be an agriculturist.—At the time when the applicant seeks relief under this section, he must be an agriculturist.

ILLUSTRATIONS

Even in respect of sales of mortgaged property after 1-10-1937, it is not enough that the judgment-debtor was the owner of the mortgaged properties to entitle him to the benefits of S. 19 and S. 23 of the Act. It must be shown that at the date of his application, the judgment-debtor must be possessed of other lands to entitle him to be deemed an agriculturist within the meaning of the Act. [95]

Applicant need not be the same person having an interest in the property sold.—The judgment-debtor applying to set aside the sale must be an agriculturist at the time of application, and need not be the same person as the agriculturist who had an interest at the time of the sale.[96]

In execution of a mortgage decree against a Hindu father and his son, the father executed a security bond binding additional properties in order to get time to satisfy the decree. Shortly after, both son and father died and mother was impleaded as 3rd defendant and legal representative of the father. She then sold the property bound by the security to her son-in-law the 4th defendant. Subsequently the hypotheca of the mortgage was sold, and part satisfaction entered. Later-on the son-in-law was impleaded in execution and a part of the security properties was sold. At this juncture the Act came into force. 3rd defendant (mother) applied to set aside the sale of security properties. The property sold was one in which an agriculturist had an interest at the time of the sale. The application by 3rd defendant is maintainable notwithstanding the fact that she parted away with her interest in the property prior to the sale. The applicant and an agriculturist who had an interest in the property at the time of the sale need not be the same person.[97]

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(93) *Gopal Menon* v. *Meenakshi Ammal*, 53 L.W. 57 : (1941) 1 M.L.J. 106 : 1941 M.W.N. 89 : 1941 M. 402.

(94) *Chinnabasava* v. *Dharmalingappa*, C.R.P. 971/40; (1942) 1 M.L.J. (N.R.C.) 30.

(95) *Kumaraswami Reddiar* v. *Muthu Gopala Naicker*, 52 L.W. 836 : (1940) 2 M.L.J. 943 : 1940 M.W.N. 1257 : 1941 M. 205.

(96) (C.M.As. 255 to 258/1939), 52 L.W. (S.R.C.) 64.

(97) (C.M.As. 255 to 258/1939), 52 L.W. (S.R.C.) 64.

D. Period of 90 days after the Act—Limitation.—The words " within ninety days " would ordinarily indicate " within 90 days after the date on which the Act commences." The difference in phraseology in S. 23 from that used in S. 20 is not sufficient to justify the Court in interpreting the above words as being intended to mean " within 89 days after the commencement of the Act." The words lay down a period of limitation within which the application may be presented and in computing that period, if the last date falls on a day when the Court is closed, such a day can be excluded.[98]

Transposition of parties after period.—Where an application under S. 23 is filed within 90 days by a person who does not possess the necessary qualification to move the Court to set aside the sale, an application by him after that period to transpose as petitioner, a respondent who possesses such qualifications with a view to overcome the statutory provision as regards limitation is not maintainable especially when he has applied under S. 23 with a view to benefit himself and not to benefit a person who is sought to be transposed as petitioner.[99]

Profits and Refund.—The Act is an expropriatory measure and the process of expropriation should not proceed beyond that which is laid down either by express language or by necessary implication therefrom. There is no express provision that judgment-debtor is entitled to the profits of the land, the sale of which is set aside under S. 23 and it does not seem that any such provision can be read into the Act by necessary application of its terms[1]. Where debtor in mortgage suit had drawn out from proceeds of sale held in execution of decree, amount necessary to satisfy the decree, the sale in execution is set aside on application under S. 23, and the decree is scaled down, the auction purchaser's right is to get back his money in full from the person to whom it had been paid, as the sale shall be deemed not to have taken place at all. The debtor has to give back the money which he has drawn out and he remains at liberty to execute any amended decree which may be passed in scaling down proceedings. In such circumstances there can be no question of any refund of sale price by judgment-debtor. Nor can auction purchaser retain possession of property pending a payment by judgment-debtor of amount due from him under mortgage decree. Where such auction purchaser resists an application for re-delivery of property after the sale has been cancelled, under S. 23, the judgment-debtor is entitled to mesne profits for period subsequent to cancellation of sale.[2]

Sale followed by delivery.—The clause " notwithstanding that the sale has been confirmed " in no way affects the main provisions of the

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(98) *Subbaiah Nadar* v. *Thangaiah Nadar*, (C.R.Ps. 979 and 980/1939), (1941) 1 M.L.J. (N.R.C.) 17.

(99) *Venkatanarasimham* v. *Suryanarayana*, 55 L.W. 577 : (1942) 2 M.L.J. 412 : 1942 M.W.N. 558 : 1942 M. 708 : 206 I.C. 252.

(1) *Chinakondayya* v. *Ramalingareddi*, 55 L.W. 33 (2) : (1941) 2 M.L.J. 1060 : 1942 M.W.N. 27 : (1942) M. 271.

(2) *Seshavataram* v. *Ramayya*, 56 L.W. 206 : (1943) 1 M.L.J. 34 : 1943 M.W.N. 65 : 1943 M. 271 : 209 I.C. 328.

section and cannot be used to introduce any new provisos (*i.e.*) as that a sale shall not have been followed by delivery of property.[3] So S. 23 applies even when a sale has been followed by delivery.[4]

Entire sale to be set aside.—A sale has got to be set aside in entirety even though the applicant is interested in one of the items comprised in the sale.[5] An application by one judgment-debtor can enure to the benefit of the other judgment-debtors also. The whole sale has to be set aside and proceedings under S. 19 will result in benefit to the several judgment-debtors according as they are agriculturists or not.[6]

Dismissal for default.—An application under O. 9, r. 9 of the Code of Civil Procedure read with S. 141, Civil Procedure Code, would lie to restore an application under S. 23 which has been dismissed for default.[7] It is wrong to hold that an application under S. 23 is in execution of a decree and that O. 9 of Civil Procedure Code does not warrant the restoration of such an application when it has been dismissed for default.[8]

Sales under the Madras Estates Land Act.—S. 23 does not apply to sales other than those in execution of decrees and hence does not apply to a scale held under the summary provision of S. 118 of the Madras Estates Land Act.[9] "Any decree" will include decrees under the Madras Estates Land Act and S. 23 applies to sales held in execution of such decrees for arrears of rent.[10] The decree obtained without impleading the transferee of the holding under S. 145 of the Madras Estates Land Act will not bind him and he cannot be a judgment-debtor entitled to proceed under S. 23.[11]

Notice.—Under the proviso, notice should be given to the decree-holder, auction purchaser and other persons interested in such sale. The words "other persons interested in such sale" would not, apparently, include all persons who are parties to the suit. The intention appears to be that notice should go to all persons interested

(3) *Subbaiah Naicker* v. *Savarimuthu Pillai*, 52 L.W. 646 : (1940) 2 M.L.J. 709 : 1940 M.W.N. 1121 : 1941 M. 73 (2).

(4) *Subbaiah Nadar* v. *Thangaiah Nadar*, (C.R.Ps. 979 and 960/1939) (1941) 1 M.L.J. (N.R.C.) 17.

(5) *Parvathi Amma* v. *Subrahmaniah Pattar*, 52 L.W. 680 : (1940) 2 M.L.J. 749 : 1940 M.W.N. 1148 : 1940 M. 944.

(6) *Subbaiah Nadar* v. *Thangaiah Nadar*, (C.R.Ps. 979 and 980/1929) (1941) 1 M.L.J. (N.R.C.) 17.

(7) *Lakshmadu* v. *Saramma*, (C.R.P. 1519/1939), (1940) 2 M.L.J. (N.R.C.) 71.

(8) (C.R.P. 2131/1939) 53 L.W. (S.R.C.) 76, *Visvanathan* v. *Chunnilal*, 60 L.W. 218 : 1947 M. 377 : (1947) 1 M.L.J. 228.

(9) *Veeraswami* v. *Rayanim*, (C.R.P. 123/1939), 53 L.W. (S.R.C.) 71 : (1941) 1 M.L.J. (N.R.C.) 60 : 1941 M.W.N. (N.R.C.) 50 (2); (C.R.P. 1913/1939), 50 L.W. (S.R.C.) 78.

(10) *Venkataratnam* v. *Surya Rao*, 53 L.W. 86 : (1941) 1 M.L.J. 156 : 1941 M.W.N. 96. *Kallalagar Devasthanam* v. *Bhaskaram Pillai*, (1942) 2 M.L.J. 450 : (1942) M.W.N. 632 : 1942 M. 741.

(11) *Venkata Krishna Rao* v. *Nammayya*, (C.R.P. 677/1939), (1941) 1 M.L.J. (N.R.C.) 26.

in upholding the sale.[12] Other decree-holders who may have obtained rateable distribution from out of sale proceeds and also subsequent alienees from auction purchasers are interested in upholding the sale and notice to them is necessary. Thus a notice to the puisne mortgagee impleaded in a suit on mortgage is necessary.[13]

Old Law : Appeal.—No appeal lies from an order under S. 23 as the question is not one relating to execution, discharge and satisfaction of the decree within the meaning of S. 47.[14] under 525-A(*e*), appeal lies.

Decrees of foreign Court.—Where a decree has been passed by a foreign Court, *e.g.*, Cochin Court to which the Act has no application, the judgment-debtor cannot claim to be an agriculturist entitled to the benefits of S. 23 in respect of a sale in execution of that decree.[15]

Application by minors.—S. 6 of the Indian Limitation Act only refers to a suit and an application for execution of a decree. As an application under this section is not one for execution, (1) a minor judgment-debtor cannot get the benefit of extension of the period within which an application has to be made (90 days after the commencement) of the Act under S. 6 of the Indian Limitation Act.

Power of Court to set aside sales of immovable property in certain cases.

Central Act IX of 1908. Central Act V of 1908.

23-A. Where in execution of any decree, any immovable property, in which any person entitled to the benefits of the Madras Agriculturists' Relief (Amendment) Act, 1948, had an interest, has been sold or foreclosed on or after the 30th September 1947, and the sale has not been confirmed before the commencement of the said Act, or ninety days have not elapsed from the confirmation of the sale or from the foreclosure, at such commencement, then, notwithstanding anything contained in the Indian Limitation Act, 1908, or in the Code of Civil Procedure, 1908, and notwithstanding that the sale has been confirmed, any judgment-debtor claiming to be entitled to the benefits of the said Act, may apply to the Court within ninety days of such commencement or of the confirmation of the sale, whichever

(12) *Kumaraswami Reddiar* v. *Muthugopala Naicker*, 52 L.W. 846 : (1940) 2 M.L.J. 943 : 1940 M.W.N. 1257 : 1941 M. 205.

(13) *Ibid.*

(14) *Viswanatha Iyer* v. *Narayanaswami Iyer*, 50 L.W. 201 : (1939) 2 M.L.J. 398 : 1939 M.W.N. 735 (2) : 1939 M. 796.

(15) *Parameswara Menon* v. *Narayana Menon*, (C.R.P. 1401/1939), 52 L.W. S.R.C.) 61 ; (1940) 2 M.L.J. (N.R.C.) 61.

is later, to set aside the sale or foreclosure of the property, and the Court shall, if satisfied that the applicant is a person entitled to the benefits of the said Act, order the sale or foreclosure to be set aside and thereupon the sale or foreclosure shall be deemed not to have taken place at all:

Provided that no such order shall be made without notice to the decree-holder, the auction-purchaser, and other persons interested in such sale or foreclosure and without affording them an opportunity to be heard in the matter.

NOTES

Scope.—For the purpose of conferring full benefit of the amendments made in favour of the agriculturist debtors by the Amendment Act XXIII of 1948 this provision is engrafted on lines similar to S. 23 enabling the debtors to apply for setting aside the sales and foreclosures of immovable property after 30–9–1947 and prior to the date of commencement of the Amendment Act. The judgment-debtor has to apply for the relief where the sale is not confirmed before the date of commencement of the Act, or where 90 days have not elapsed on that date from the foreclosure or confirmation of sale. The period of limitation prescribed is 90 days after the commencement of the Act or after the confirmation of sale, whichever is later. The date 30–9–1947 is chosen as it was the date when the amending Bill was first published in the *Fort St. George Gazette*.

Consequential provision on setting aside of sale.

24. Where a sale is set aside under (section 23 or section 23-A,) a purchaser shall be entitled to an order for repayment of any purchase money paid by him against the person to whom it has been paid:

Provided that no poundage shall be payable in respect of any such sale and provided further that where poundage has been collected the Court shall direct the same to be refunded.

NOTES

Scope.—On setting aside the sale, it shall be deemed not to have taken place at all, and consequently a purchaser is entitled to an order for repayment of the purchase money paid by him against the person to whom it has been paid.

Executability of the order.—An order made under the section may be executed in the manner prescribed for execution of decrees, according to S. 36 of the Civil Procedure Code.

Limitation.—When no period of limitation is prescribed, the residuary Art. 181 of the Indian Limitation Act applies and the period of limitation for an application under this section is three years from the date when the right to apply accrues (*i.e.*) the date when the sale is set aside under S. 23.

Power of Court to reject certain claims.

24-A. If in any suit or proceeding for the recovery of a debt, the Court is satisfied that the claim therein is made in evasion of the provisions of this Act and that the document upon which the claim is based, although purporting to be executed by a different debtor or in favour of a different creditor, was in fact in renewal or part renewal of a prior debt to which the provisions of this Act would have applied, the Court shall disallow the costs:

Provided that where in any such suit or proceeding two or more distinct claims are made, the provisions of this section shall apply separately in respect of each such claim.

NOTES

Scope.—This new section is added by the Amendment Act XXIII of 1948 empowering the Court to reject the claims based on documents which have been executed to evade the provisions of the Act.

Proviso.—Where two or more distinct separate claims are made and only some of them are found to have been made in evasion of the provisions of the Act, the latter claims only will be rejected.

Alienations by debtor.

25. All alienations of immovable property made by an agriculturist debtor on or after the 1st October, 1937, shall be invalid as against every creditor whose sale in execution or foreclosure decree has been set aside under S. 23 or who became entitled to rateable distribution of the proceeds of such sale under S. 73 of the Code of Civil Procedure, 1908.

Inserted by Sec. 3 of the Madras Act XV of 1943.

25-A : Appeals.—(1) An appeal shall lie from any of the following orders passed by a Court under this Act, as if such orders related to the

execution, discharge or satisfaction of a decree within the meaning of S. 47 of the Code of Civil Procedure, 1908 :—

(*a*) An order under sub-S. (1) of S. 18 amending or refusing to amend a decree ;

(*b*) An order under S. 19 amending or refusing to amend a decree or entering or refusing to enter satisfaction in respect of a decree ;

(*c*) An order under clause (*a*) of sub-S. (4) of S. 19-A declaring the amount due to the creditor or declaring the debt to have been discharged.

(*cc*) An order under Clause (*b*) of sub-S. 4 of S. 19-A dismissing the application on the ground that the debtor was not an agriculturist ;

Inserted by S. 15 (1) of Act XXIII of 1948.

(*d*) An order under S. 22 directing or refusing to direct the refund of any excess realised in an execution of a decree ;

(*e*) An order under S. 23 or " Sec. 23-A" setting aside or refusing to set aside any sale of foreclosure of immovable property ;

(*f*) An order under S. 24 directing or refusing to direct the repayment of any purchase money realised in execution of a decree.

(2) From any order passed on an appeal presented to it under the provisions of sub-S. (1) by a Court subordinate to the High Court, an appeal shall lie to the High Court on any of the grounds mentioned in sub-S. (1) of S. 100 of the Code of Civil Procedure, 1908.

NOTES

Sec. 25.

Scope.—This section analogous to S. 64, Civil Procedure Code, and S. 20 of the Madras Debt Conciliation Act (XI of 1936) is enacted to prevent the judgment-debtors from entering into sham transactions after 1–10–1937 with an intent to defraud their decree-holders whose sales are set aside at their own instance, and to preserve in tact the rights of other decree-holders entitled to rateable distribution.

Sales after 1-10-1937.—This section invalidates alienations after 1–10–1937 but not those before 1–10–1937. Contracts of sales entered into before 1–10–1937 and fructified into actual sales after 1–10–1937

are not invalid on the analogy of S. 64.[16] The section is mandatory in its terms, and hence a private sale with the consent or connivance of the decree-holder is not exempt from the operation of S. 25, being analogous to S. 64.[17]

Renewal.—A renewal of a mortgage existing before 1-10-1937 will not be an alienation falling within this section.[18]

No poundage shall be payable.—No poundage shall be payable because it has been provided under S. 23 that the sale "shall be deemed not to have taken place at all."

Sec. 25-A.

Limitation Act : S. 5.—S. 25-A which gives right of appeal does not mention any period of limitation different from the period prescribed by first schedule to the Limitation Act, the provisions of S. 29 (2) of Limitation Act have no application so as to exclude provision of S. 5 from being applied to an appeal preferred under S. 25-A.[19]

Small Cause Court's Order.—Order by Small Cause Court amending its decree under S. 19 is not appealable under S. 25-A.[20]

Clause (cc).—This clause is newly inserted by S. 15 of Amendment Act 23 of 48 to get over the effect of decisions [21] wherein it was held that no right of appeal is conferred by S. 25-A in respect of orders passed under 19-A (4) (*b*) dismissing application of debtor on the ground that he is not an agriculturist. So, according to previous state of law, the debtor is placed at a disadvantage. This sub-clause removes that disadvantage and gives right of appeal to the debtor against orders under S. 19-A (4) (*b*).

District Collector to furnish information as to certain facts.

26. Any creditor may apply to the Collector of the district in which the creditor believes his debtor to have been or to be assessed to income-tax in terms of proviso (A) to S. 3 (ii) or to profession, property or house tax under the Cantonments Act, 1924, in terms of provisos (B) and (C) to that section, for information as to the above facts and the Collector shall thereupon ascertain such information and grant to such creditor a memorandum in the prescribed form as to

(16) *Veerappa* v. *Venkatarama*, (1935) M. 872 : 42 L.W. 544 : 69 M.L.J. 678 : 1935 M.W.N. 942 ; 59 M. 1 ; *Veeraraghavayya* v. *Kamaladevi*, 1935 M. 193 : 41 L.W. 739 : 68 M.L.J. 67 : 1935 M.W.N. 488.

(17) *Subbayya* v. *Subbareddi*, (1927) M. 648 : 101 I.C. 591.

(18) *Mahadevappa* v. *Srinivasa Rao*, 4 M. 417.

(19) *Venkatramayya* v. *Venkatsubbiah*, 59 L.W. 202 : (1946) 1 M.L.J. 271.

(20) *Venkatiswarlu* v. *Venkatasubbayya*, A.A.O. 222/25, 59 L.W. (S.R.C) : 53(1(.

(21) *Mahboob Ali* v. *Khudratilla* (1943) 2 M.L.J. 630 : 1944 M 133 *Lashminarayan* v. *Narasamma* A.A.O. 182/45, 59 L.W. (S.R.C.) 46 (2) (B) : *Venkataswami Naidu* v. *Nagireddi*, 58 L.W. 14 ; (1945) 1 M.L.J. 57 : 1944 M.W.N. 748 : 1945 M 126.

whether the debtor has been so assessed to income-tax or to profession, property or house tax. Such memorandum shall be received in every Court as evidence of the facts stated therein.

NOTES

Certificate not conclusive.—A certificate given under this section shall be received as evidence of the facts embodied therein but there is nothing in the section to show that it is made conclusive evidence of those facts.

Executive authorities of local bodies to furnish information as to certain facts.

27. Any creditor may apply to the executive authority of a municipality, the president of a local board or the Revenue Officer of the Corporation of Madras for information as to whether his debtor was or is assessed to profession, property or house tax in terms of provisos (B) and (C) to S. 3 (*ii*), and the executive authority, president or Revenue Officer shall thereupon grant to such creditor a certificate in the prescribed form as to whether the debtor named in the application has been so assessed to profession, property or house-tax. Such certificate shall be received in every Court as evidence of the facts stated therein.

NOTES

Certificate not conclusive.—A certificate given under this section is only a piece of evidence but is not conclusive of the facts stated therein.

A certificate given by a Local Board is not conclusive of facts which it states and it is open to the other side to show that there is an error relating to the amount of tax or the nature of the income in respect of which it was levied.[22]

Power to make rules.

28. (1) The Provincial Government may make rules for carrying into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules—

(*a*) in regard to any matter which is required to be prescribed by this Act;

(22) *Kamakshi Chetti* v. *Alaganan Chettiar,* 52 L.W. 430 : (1940) 2 M.L.J. 468 (1) : 1940 M.W.N. 948 : 1941 M. 73 (1).

(*b*) prescribing the form of, and the fees to be paid in respect of, applications under this Act; and

(*c*) for removing any difficulty in giving effect to the provisions of this Act.

(3) All rules made under this section shall be consistent with the provisions of this Act. They shall be published in the Official Gazette and upon such publication shall have effect as if enacted in this Act.

NOTES

The power to make rules reserved to the Government under S. 28 is very ample and the only limitation that restricts its exercise is that the rules made in exercise of this power should not be inconsistent with the provisions of the Act.

Rule 8.—R. 8 is *ultra vires*. An appeal does not lie as of right but must be conferred by express enactment. In making provision for appeals, the Provincial Government is not making a rule for carrying into effect the purposes of the Act. [23]

Rule 9—An appeal under r. 9 of the rules framed by the Government is governed by Art. 11 of Sch. II of the Court-Fees Act and Court-fee payable is Rs. 2.[24]

Retrospective effect of Amendment Act XXIII of 1948: Clause 16 of the Bill which is same as S. 2 of Amendment Act of 1948 provides for retrospective effect of the amendments made by the said Act subject to the following exceptions, namely :—

(1) that decrees and orders which have become final or have been fully executed before the coming into operation of the Act should not be reopened, and (2) that no creditors should be required to refund any sum received by him before the commencement of the Act.

Though the passing of an Amendment Act which changes the law with retrospective effect is not a sufficient ground for reopening in review matters which had already been decided on the basis of law as it stood prior to amendment, a defendant cannot be denied the right to take a supplementary defence available to him in a pending case under retrospective provision just as Validating Ordinance XI of 1945 which had come into force before the suit is finally decided though the suit had been remitted before the ordinance on the footing of Law as it stood prior to the Ordinance. [25] The rational of this decision equally applies to the raising of supplementary defences accruing under the Amendment Act.

(23) *Nagappa Chettiar* v. *Annapurna Achi*, 53 L.W. 79: (1941) 1 M.L.J. 164: 1941 M.W.N. 131: 1941 M. 235; I.L.R. 1941 M. 261 (F.B.).

(24) *Venkataratnam*, In re, 53 L.W. 637.

(25) *Krishnamacharlu* v. *Subba Rao*, C.R.P. 1455/45, 60 L.W. (S.R.C.) 7.

RULES UNDER THE MADRAS AGRICULTURISTS' RELIEF ACT.

In exercise of the powers conferred by clauses (*a*) and (*b*) of sub-S. (2) of S. 28 of the Madras Agriculturists' Relief Act, 1938, the Government of Madras are hereby pleased to make the following rules :—

* 1. For the purposes of Proviso (C) to clause (ii) of S-3 of the Madras Agriculturists' Relief Act, 1938, the annual rental value of any land which is not appurtenant to any building or which is occupied by appurtenant huts, and whose assessment is not based on the annual rental value or on the capital value shall (i) in case the land is situated in the City of Madras to be deemed to be the value in respect of which the assessment is fixed by the Commissionor of the Corporation of Madras under cl. (*b*) of the proviso to Section 102 of the Madras City Municipal Act, 1919, with reference to the extent of the land; and (ii) in case the land is situated elsewhere, in the Province of Madras, be deemed to be 5% of its capital value as determined by the Collector in the manner laid down in the rules under sub-Section (3) of Section 81 of the Madras District Muncipalities Act, 1920. (Rule 1 inserted and other rules renumbered by notification in G. O. No. 132, Rev., dated 23-1-1941)

2. Any tenant desirous of paying into Court any amount towards the rent due or claimed to be due by him for fasli 1347 or 1346 or both, under sub-S. (4) of S. 15 of the Act shall present to the Court an application in writing for the purpose. The application shall specify the name and address of the applicant, the amount of rent paid by him into Court, the fasli or faslis for which it is paid and the name and address of the landholder, under-tenure holder, janmi or intermediary to whom it is to be paid. The application shall be signed and verified in the same manner as a pleading under the Code of Civil Procedure, 1908.

3. Where a tenant has paid into Court an amount which he believed to be the full amount of the rent due in respect of the holding—(*i*) for fasli 1347, on or before the 30th September, 1938, or (*ii*) for fasli 1346, on or before the 30th September, 1939, and it is subsequently found by the Court that owing to a *bona-fide* mistake in calculating the price of paddy or other article payable as rent, or the interest on the rent, or otherwise, the amount actually paid fell short of the correct rent due for the fasli concerned as finally determined by the Court, the tenant shall be entitled to pay into Court the deficiency within fifteen days of the date on which the Court determined the correct rent; and such payment

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* Inserted by G. O. MS. No. 2309, dated 20-9-43. Amendment deemed to have been or to have come into force on 27-10-1939.

shall, for the purposes of the Act, be deemed to have been made on the date on which the original payment into Court was made.

*4. An application under Ss. 18, 19, 19-A, 20, 22, or 23 of the Act shall be in writing, shall specify the name and address of the applicant, the name and address of the respondent, a clear statement of the facts of the case and the nature of the relief prayed for, and shall be signed and verified in the same manner as a pleading under the Code of Civil Procedure, 1908.

5. (1) Any debtor may apply to the executive authority of a municipality, the President of a Local Board or the Revenue Officer of the Corporation of Madras for information as to whether such debtor was or is assessed to profession, property or house-tax in terms of provisos (b) and (c) to S. 3 (*ii*) of the Act and the Executive Authority, President or Revenue Officer shall thereupon grant to such debtor a certificate in Form B appended to these rules, with such variations as circumstances may require as to whether he has been so assessed to profession, property or house-tax. Such certificate shall be received in every Court as evidence of the facts stated therein.

(2) An application under S. 26 or 27 of the Act or sub-rule (1) shall be in writing, shall specify the name and address of the person in respect of whom, and the purpose for which such information is required, and shall be signed and verified in the same manner as a pleading under the Code of Civil Procedure, 1908. A single application may be made to cover all the taxes referred to in S. 27 of the Act or in sub-rule (1) in respect of all the four half-years mentioned in provisos (B) and (C) to S. 3 (*ii*) of the Act.

(3) In respect of every application under S. 27 of the Act or under sub-rule (1), there shall be paid to the municipality, the Local Board or the Corporation of Madras, as the case may be, a fee of twelve annas in cash for each half-year in respect of which information is applied for.

6. There shall be affixed to every application under S. 15 (4) read with rule (1), (18), (19), 19-A*, (20), (22), (23), or (26) of the Act a court-fee stamp of the value of twelve annas.

7. There shall be paid—

(*a*) in respect of every application under sub-S. (4) of S. 15 of the Act read with rule 1, process fees in accordance with the scale prescribed in item 1 in Appendix III to Order No. 200 of the Standing Orders of the Board of Revenue ; and

(*b*) in respect of every application under S. 18, 19, 19-A*, 20, 22, or 23, of the Act process fees in accordance with the scales prescribed in the Civil Rules of Practice and Circular Orders. (This was newly added. Vide *Fort St. George Gazette*, dated 7th May, 1940).

Inserted by G.O. M S. 2309, dated 20-9-1943.

8. (1) A memorandum granted to a creditor under S. 26 of the Act shall be in Form A appended to these rules with such variations as circumstances may require.

(2) A certificate granted to a creditor under S. 27 of the Act shall be in Form B appended to these rules, with such variations as circumstances may require.

9. (1) All suits and execution proceedings for the recovery from an agriculturist of the arrears of rent due from him to a landholder or an under-tenure-holder under the Madras Estates Land Act, 1908, or to a janmi or intermediary under the Malabar Tenancy Act, 1929, which has accrued for the fasli year 1345 and prior faslis, whether solely or in combination with the arrears of rent which has accrued for fasli 1346 or 1347 or both, pending on the 21st June, 1938, or instituted thereafter shall stand stayed until the 30th September, 1938, or if the rent for fasli 1347 is paid on or before the 30th September, 1938, until the 30th September, 1939.

Provided that nothing in this sub-rule shall be deemed to deprive the agriculturist of any remedy or relief which may be available to him in any such suit or proceeding.

Explanation 1.—In this sub-rule, "execution proceeding" shall include the sale of an agriculturist's holding under the provisions of Chapter VI of the Madras Estates Land Act, 1908. (This was newly added. Vide *Fort St. George Gazette*, dated 12th March, 1940).

Explanation 2.—In this sub-rule, the expression "fasli year" and "fasli" shall have the same meaning as in S. 15 of the Act.

(2) All suits and execution proceedings stayed under sub-rule (1) shall, after the 30th September, 1938, or the 30th September, 1939, as the case may be, proceed, subject to the provisions of the Act, from the stage which had been reached at the time when they were so stayed.

10. Where a person in whose name an assessment to property or house-tax has been made in terms of proviso (C) to S. 3 (*ii*) of the Act, proves that he was not the owner of the property or house assessed, at any time during the period mentioned in the said proviso, such assessment shall not by itself have the effect of excluding such person from the category of "agriculturist" as defined in the said section. (This was added in September, 1938).

[ ]Old rule now deleted

["8. Appeals shall lie from any of the following orders passed by a Court under the Act, namely:—

(*a*) an order under S. 18 (1) amending or refusing to amend a decree;

(*b*) an order under S. 19 amending or refusing to amend a decree or entering or refusing to enter satisfaction in respect of a decree;

(c) an order under S. 20 staying or refusing to stay proceedings in execution of a decree ;

(d) an order under S. 22 directing or refusing to direct the refund of any sum realised in execution of a decree ;

(e) an order under S. 23 setting aside or refusing to set aside any sale or foreclosure of immovable property ; and

(f) an order under S. 24 directing or refusing to direct the repayment of any purchase-money realised in execution of a decree ; as if the order related to the execution, discharge or satisfaction of the decree within the meaning of S. 47 of the Code of Civil Procedure, 1908. (Issued on 27th October, 1939).]"[1]

Rules relating to applications to Civil Courts for scaling down of non-decreed debts.

In exercise of the powers conferred by sub-S. (1) and clauses (b) and (c) of sub-S. (2) of S. 28 of the Madras Agriculturists' Relief Act, 1938 (Madras Act IV of 1938), His Excellency the Governor of Madras is hereby pleased to make the following rules :—

1. In these rules—

(a) "Act" means the Madras Agriculturists' Relief Act, 1938 ;

(b) "Court" means the Court having jurisdiction under these rules ; and

(c) expressions used in these rules but not defined herein shall have the same meaning as in the Act.

2. (1) Where any debt, other than a decree-debt, is due by any person claiming to be an agriculturist entitled to the benefits of the Act in respect of such debt, the debtor or the creditor may apply to the Court for a declaration as to the amount of the debt due by the debtor to the creditor :

Provided that no such application shall be presented or be maintainable if any suit for the recovery of the debt be pending.

(2) The provisions of sub-rule (1) shall also apply to any person claiming that his debt has been discharged by virtue of the provisions of the Act.

3. (1) Every application under rule 2 shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

(2) There shall be affixed to every such application whether by the debtor or by the creditor a Court-fee stamp of the value of 12 annas.

(3) There shall be paid in respect of every such application whether by the debtor or by the creditor, process fees in accordance

(1) Omitted by G.O. No. 2309, dated 20-9-1943.

with the scales prescribed in the Civil Rules of Practice and Circular Orders. (This sub-rule was newly added. Vide *Fort St. George Gazette*, dated 7th May, 1940.)

4. (1) Every application presented by a debtor shall contain the following particulars, namely :—

(*a*) the name and address of the applicant ;

(*b*) the name and address of the creditor in respect of whose debt the application is presented ;

(*c*) a statement that the debtor claims to be an agriculturist entitled to the benefits of the Act in respect of the debt of the creditor as against whom the application is presented ;

(*d*) the particulars of the debt in respect of which the declaration is claimed, including all matters necessary to invoke the jurisdiction of the Court to have the debt scaled down ; and

(*e*) the amount for which the applicant prays that the debt may be reduced.

(2) The provisions of sub-rule (1) shall apply *mutatis mutandis* to an application presented by a creditor.

5. The application shall be rejected if it does not comply with any of the requirements of rule 4.

The rejection of an application under this rule shall not preclude, the applicant from presenting a fresh application.

6. (1) On receipt of an application under rule 4, the Court shall unless it rejects it under rule 5, pass an order fixing a date for hearing the application.

(2) Notice of the order under sub-rule (1) shall be served on the creditor and the debtor.

7. On the date originally fixed under rule 6 or on any subsequent date to which the application may be adjourned by the Court, the Court shall, after taking such evidence or making such enquiry as it may consider necessary, pass such order on the application as it thinks fit.

8. If, at any time, while an application is pending in the Court, a suit is filed by the creditor for the recovery of the debt which is the subject-matter of the application, the Court shall dismiss the application.

9. The order of the Court declaring the amount of the debt under rule 7 shall be subject to appeal and second appeal as if it were a decree in an original suit.

10. The Courts having jurisdiction under these rules shall be the Courts which would have jurisdiction to entertain suits for the recovery of the debts as unscaled.

FORMS.

FORM A.

[*See* rule 8 (*i*).]

Memorandum granted by the Collector of..............under S. 26 of the Madras Agriculturists' Relief Act, 1938 (Madras Act IV of 1938).

Read application from..............dated.................Mr./Mrs./Miss ....of.......................has been assessed to—

(1) income-tax under[1]........in the financial year ending............

(2) profession tax by the............Cantonment for the half-year ending............on a half-yearly income of............rupees, derived from a profession other than agriculture, under[1]............

(3) property or house-tax by the............Cantonment in respect of buildings or lands other than agricultural lands under[1]................and that the aggregate annual rental value of such buildings or lands is............ ....rupees.

Signature of the Collector.

FORM B.

[*See* rules 5 (1) and 8 (2).]

Certificate granted under rule (i) of the rules made under clauses (*a*) & (*b*) of S. 28 of the Madras Agriculturists Relief Act.

Certificate granted under S. 27 of the Madras Agriculturists' Relief Act, 1938.[2]

Read application from............dated............

I..............the executive authority of..............Municipality, the President of ....Board, the Revenue Officer of the Corporation of Madras, do hereby certify that Mr./Mrs./Miss..............of.............. has been assessed to—

(1) profession tax for the half-year ending............on a half-yearly income of............rupees derived from a profession other than agriculture, under[1]............

(2) property or house-tax in respect of buildings or lands other than agricultural lands under[1]............and that the aggregate annual rental value of such buildings or lands is............rupees.

Signature of the authority granting the certificate

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(1) The appropriate Act or law under which assessment is made shall be entered here.

(2) Amended by G.O. No. 3072, Development, dated 18th December, 1939.

APPENDIX

THE MADRAS DEBT CONCILIATION ACT

(XI OF 1936)

[*5th April*, 1936

An Act to make provision for the setting up of Debt Conciliation Boards to relieve agriculturists from indebtedness.

WHEREAS it is expedient to relieve agriculturists from indebtedness by amicable settlement between them and their creditors;

And whereas the previous sanction of the Governor-General has been obtained to the passing of this Act;

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE MADRAS DEBT CONCILIATION ACT, 1936.

(2) It extends to the whole of the Presidency of Madras.

[1](3) It shall come into force on such date as the [2][Provincial Government] may, by notification, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) 'landholder' means a person holding land under a Sanad-i-Milkiyat-i-istimrar, a zamindar, shrotriyamdar, jagirdar or inamdar, a person farming the land revenue under Government, and a holder of any land under ryotwari settlement or in any way subject to the payment of revenue direct to Government;

(*b*) 'tenant' means a ryot having a permanent right of occupancy in his holding and includes a 'Kanamdar' in Malabar and a 'Mulgeni' tenant in South Kanara;

(*c*) 'agriculture' includes horticulture, the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry or bees, sericulture and the growing of fruits, vegetables and the like;

(*d*) 'board' means a Debt Conciliation Board established under sub-S. (1) of S. 3;

(*e*) 'creditor' means a person to whom a debt is owing and includes a co-operative society;

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(1) The Act comes into force on the 1st January, 1937. *Vide* G.O. No. 3692 dated 17-12-1936, *Fort St. George Gazette*, 22nd December, 1936.

(2) These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(*f*) 'debt' means all liabilities owing to a creditor, in cash or kind, secured or unsecured, whether payable under a decree or order of a Civil Court or otherwise, and whether mature or not, but shall not include arrears of wages, land revenue or anything recoverable as an arrear of land revenue, rent as defined in the Madras Estates Land Act, 1908 (Madras Act I of 1908), or any money for the recovery of which a suit is barred by limitation;

(*g*) 'debtor' means a person—

(i) who earns his livelihood mainly by agriculture or who is an occupancy tenant or landholder whether he cultivates the land personally or otherwise; and

(ii) whose debts exceed one hundred rupees;

(*h*) 'prescribed' means prescribed by rules made under this Act;

(*i*) 'secured debt' includes mortgage-debt or any debt for which there is security, lien or charge on immovable property created by deed, statute or otherwise;

(*j*) 'secured creditor' means a creditor who holds for his debt a security by way of mortgage, lien or charge on immovable property created by a deed, statute or otherwise.

Establishment and constitution of boards.

3. (1) The [3][Provincial Government] may establish a Debt Conciliation Board for any district or part of a district. Such board shall consist of a Chairman and two members appointed by the Government. The Chairman shall be a person who holds or has held an office not lower in rank than that of a Subordinate Judge or a Deputy Collector. One at least of the members shall be a non-official. The [3][Provincial Government] may, for reasons to be recorded in writing, cancel the appointment of the Chairman or any member of the board, or dissolve any board and from the date of such dissolution the board shall cease to exist.

(2) The Chairman and every member of a board so established shall be appointed for a term not exceeding three years. Such Chairman or member may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding three years.

(3) A board shall have such quorum as may be prescribed.

(4) Where the Chairman and members of a board are unable to agree, the opinion of the majority shall prevail. Where the board is equally divided, the Chairman shall have a casting vote.

(5) When a board is dissolved or otherwise ceases to exist, the [4][Provincial Government] may, at any time, establish another board for the area for which the former board was established and may declare the board newly established to be the successor-in-office of the board which has ceased to exist and such board shall exercise all the powers under the Act.

Application for settlement between debtor and his creditors.

4. (1) A debtor may make an application for the settlement of his debts to the board established for the local area within which he ordinarily resides, or if no board has been established for that local area, to the board established for any local area in which he holds immovable property, if any, but he shall not apply to more than one board.

(2) Unless the debtor has already made an application under sub-S. (1), any of his creditors may make an application to a board to which the debtor might have applied under that sub-section.

(3) If applications for the settlement of the debts of the same debtor are made to more than one board, such application shall, in accordance with rules made under this Act, be transferred to and dealt with by one board as one single application.

Verifications of application.

5. Every application to the board shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (V of 1908), for signing and verifying plaints.

Particulars to be stated in application.

6. (1) Every application made by a debtor to a board shall contain the following particulars, namely :—

(*a*) a statement that the debtor is unable to pay his debts ;

(*b*) the place where he resides ;

(*c*) the amount and particulars of all claims against him together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him ; and

(*d*) particulars of the debtor's property, both movable and immovable (including claims due to him), a specification of the value thereof and of the places where the same may be found, and details of any mortgage, lien or charge subsisting thereon.

(2) Every application made by a creditor shall contain the following particulars, namely :—

(*a*) the place where the debtor resides ; and

(*b*) the amount and particulars of his claim against such debtor.

(4) These words were substituted for the words "Local Government" by paragraph 4 (1) of Government of India (Adaptation of Indian Laws) Order, 1937.

Rejection of application.

7. The application shall be rejected if it does not comply with any of the requirements mentioned in Ss. 5 and 6.

The rejection of an application under this section shall not preclude the applicant from making a fresh application.

Procedure on application.

8. (1) On receipt of an application under S. 4, the board shall, unless it rejects the application under S. 7, pass an order fixing a date and place for hearing the application.

(2) Notice of the order under sub-S. (1) shall be sent by registered post to the debtor and creditors.

(3) If the application is made by a creditor, the debtor shall, on his appearance, furnish the particulars mentioned in sub-S. (1) of S. 6, and notice shall be sent to all the creditors specified by him.

Dismissal of application.

9. An application under S. 4 may be dismissed by the board at any stage of the proceedings:—

(*a*) If, for reasons to be stated in writing, the board does not consider it desirable or practicable to effect a settlement of debts; or

(*b*) If, in the opinion of the board, the applicant fails to pursue his application with due diligence:

Provided that, when such applicant is a creditor, the board, instead of dismissing such application, may substitute the debtor or any other creditor, who shall thereafter be deemed to be the applicant for the purposes of this Act; or

(*c*) If the application includes a claim which, in the opinion of the board, is collusive and intended to defraud any creditor.

Notice calling upon creditors to submit statements of debts.

10. (1) If, after examining the debtor, it is in the opinion of the board desirable to attempt to effect a settlement between him and his creditors, a notice shall be issued and served or published in the manner prescribed, calling upon every creditor or the debtor to submit a statement of debts owed to such creditor by the debtor. Such statement shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying claims and shall be submitted to the board within two months from the date of service or publication of the notice as the case may be:

Provided that, if the board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such directions, it may extend the period for the submission of his statement of the debt owed to him.

(2) Subject to the provisions of sub-S. (3) every debt of which a statement is not submitted to the board in compliance with the

provisions of sub-S. (1) shall be deemed for all purposes and all occasions to have been duly discharged.

(3) If a creditor proves to the satisfaction of the board or a civil Court that the notice was not served on him, or that he had no knowledge of the publication thereof, or that for some other sufficient reason, he was unable to submit the statement, the board or Court may revive the debt, if the creditor files an application in that behalf within two months after he becomes aware of the proceedings taken under this section:

Provided that a creditor shall not be entitled to apply under this sub-section to the board and to a civil Court simultaneously or to apply to either the board or a civil Court after having applied to the other.

Procedure on submission of statement of debts.

11. (1) Every creditor submitting a statement of the debts owed to him in compliance with a notice issued under sub-S. (1) of S. 10 shall furnish, along with such statement, full particulars of all such debts and shall at the same time produce all documents, including entries in books of account on which he relies to support his claims, together with a true copy of every such document.

(2) The board shall, after making for the purpose of identification every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

(3) If any document which is in the possession or under the control of the creditor is not produced by him as required by sub-S. (1) the document shall not be admissible in evidence against the debtor in any suit brought by the creditor or by any person claiming under him for the recovery of the debt:

Provided the board or the Court shall have power to excuse for valid reasons any default or delay in producing the document and to grant reasonable time for producing the same in any proceeding pending before it.

Power of board to decide disputes as to the existence or amount of debts or assets.

12. (1) The board shall call upon the debtor and each creditor respectively to explain his case regarding each debt.

(2) If there is a dispute as to the existence or the amount of the debt due to any creditor or the assets of any debtor the board may decide the matter after taking such evidence as may be adduced by all the parties concerned and such decision shall be binding on all parties in all proceedings before the board:

Provided that a decree of a civil Court relating to a debt shall be conclusive evidence as to the existence and amount of the debt.

(3) The board shall prepare a complete schedule of the creditors and of the assets and liabilities of the debtor.

Power of board to require attendance of persons and production of documents.

13. (1) Subject to rules made under this Act, a board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a civil Court by the Code of Civil Procedure, 1908 (Act V of 1908).

(2) Any person present may be required by a board to furnish any information or to produce any document then and there in his possession or power.

Agreement of amicable settlement, its registration and effect.

14. (1) If the creditors to whom more than fifty per cent. of the total amount of the debtor's debts is owing come to an amicable settlement with the debtor, such settlement shall forthwith be reduced to writing in the form of an agreement recording the amounts payable to such creditors and the manner in which, the assets from which and the times at which, they are to be paid. Such agreement if considered equitable by the board shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the board and the parties who have agreed to the amicable settlement:

Provided that, when a co-operative society is one of such creditors no settlement, in so far as it affects the debts owing to such society, shall be valid without previous approval in writing of the Registrar of Co-operative Societies:

Provided further that when a secured creditor does not agree to the settlement, such settlement shall not affect his rights to proceed against the secured property.

(2) An agreement made under sub-S. (1) shall, within thirty days from the date of the making thereof, be registered under the Indian Registration Act, 1908 (XVI of 1908), by the chairman of the board in such manner as may be prescribed and it shall then take effect as if it were a decree of a civil Court and be executable as such.

(3) For the purpose of the registration of an agreement under sub-S. (2), the chairman of the board shall be deemed to be an officer of the Government empowered to execute such agreement within the meaning of S. 88 of the Indian Registration Act, 1908 (XVI of 1908).

(4) If, after the making of an agreement under sub-S. (1), any debt is revived by the board or a civil Court under sub-S. (3) of S. 10, the agreement and all proceedings taken in pursuance thereof shall stand cancelled; the application under S. 4 shall be deemed to have been received in the office of the board on the date of such reviver, and all the provisions of this Act shall apply in respect of the application accordingly.

Properties exempt from attachment not to be taken into account.

15. In any scheme of debt conciliation under this Act such properties as are exempt from attachment under the Code of Civil Procedure, 1908 (V of 1908), shall not be taken into account and shall be left to the judgment-debtor free from any liability for his debts.

Maximum amount allowable in satisfaction of a debt.

16. In any scheme of debt conciliation under this Act, no creditor shall be allowed a greater amount in satisfaction of both principal and interest than twice the amount of the principal and if the debt was incurred before the first day of June, 1933, twice the amount due on the said date.

Power of board to dismiss application.

17. If no amicable settlement is arrived at under sub-S. (1) of S. 14 within twelve months from the date of the application under S. 4, the board shall dismiss the application.

Grant of certificate in respect of certain debts.

18. (1) Where, during the hearing of any application made under S. 4, any creditor refuses to agree to an amicable settlement, the board shall, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate, in such form as may be prescribed in respect of the debts owed by him to such creditor.

The board, in coming to a decision whether the offer made is fair or not, may take into consideration—

(*i*) the fall or rise in the value of land and its produce, in the locality;

(*ii*) the amount of consideration actually received;

(*iii*) the reasonableness of the rates of interest;

(*iv*) the onerous conditions, if any, subject to which the loan was granted;

(*v*) whether at any time, the creditor or the debtor was offered settlement of the debt in full or part and if so what the terms were, and

(*vi*) any other particulars which the board thinks it desirable to take into account.

Power of Court to disallow cost or interest.

(2) Where any creditor sues in a civil Court for the recovery of a debt in respect of which a certificate has been granted under sub-S. (1), the Court shall, notwithstanding the provisions of any law for the time being in force, not allow the plaintiff any costs in such suit, or any interest on the debt after the date of such certificate in excess of simple interest at 6 per cent. per annum on the principal amount due on the date of such certificate.

Decrees in suits after registration of agreement not to be executed.

(3) Where after the registration of an agreement under sub-S. (2) of S. 14, any unsecured creditor sues for the recovery of a debt (other than a debt incurred subsequent to such agreement) in respect of which a certificate has been granted under sub-S. (1) or any creditor sues for the recovery of a debt incurred after the date of such agreement, any decree passed in such suit shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908), not be executed as against the assets, if any, set apart in the agreement for the satisfaction of the agreed debts until all amounts recorded as payable under such agreement have been paid.

Bar of Civil Suits.

19. No Civil Court shall entertain—

(*a*) any suit in respect of—

(i) any matter pending before a board, or

(ii) the validity of any procedure or the legality of any agreement made under this Act, or

(iii) the recovery of any debt recorded as wholly or partly payable under an agreement registered under sub-S. (2) of S. 14 from any person who, as a debtor, was party to such agreement; or

(iv) the recovery of any debt which has been deemed to have been duly discharged under sub-S. (2) of S. 10, except a debt which is revived under sub-S. (3) of that section; or

(*b*) any application to execute a decree, the execution of which is suspended under sub-S. (3) of S. 18.

Avoidance of certain transfers of debtor's property.

20. Every transfer of property made, with intent to defeat or delay the creditors of the debtor, after an application has been made to a board under S. 4 and until the agreement registered in pursuance of such application has been fully carried out shall be voidable by order of the board on application by the creditors so defeated or delayed.

Alienation made with sanction of board not to be considered as a fraudulent preference.

21. Any alienation of land for a fair price made with the sanction of the board in pursuance of or to carry out the agreement mentioned in S. 14 shall not be considered as a fraudulent preference under the Presidency Towns Insolvency Act, 1909 (III of 1909) and the Provincial Insolvency Act, 1920 (V of 1920), nor shall such alienation be voidable under S. 53 of the Transfer of Property Act, 1882 (IV of 1882).

Bar of appeal or revision.

22. No appeal or application for revision shall lie against any order passed by a board.

Power of board to review its order.

23. A board may, on application from any person interested made within ninety days of the passing of an order, or on its own motion at any time, review any order passed by it and pass such order in reference thereto as it thinks fit:

Provided that no order shall be varied or reversed unless notice has been given to the persons interested to appear and be heard in support of such order.

Appearance of parties before board.

24. In any proceedings before a board any party may appear in person or with the permission of the board by a legal practitioner or an agent authorised in writing.

Stay of pending suits or other proceedings.

25. When an application has been made to a board under S. 4, any suit or other proceedings then pending before a Civil Court in respect of any debt for the settlement of which application has been made shall not be proceeded with until the board has dismissed the application.

Report by board regarding sums due to Government.

26. Where in the course of an enquiry into an application made under S. 4 a board finds that there is any sum owing to Government on account of loans advanced under the Agriculturists' Loans Act, 1884 (XII of 1884) or the Land Improvements Loans Act, 1883 (XIX of 1883), or otherwise, the board shall report this fact to the Collector.

Computation of period of limitation for suits and proceedings.

27. (1) In calculating the period of limitation for any suit filed in, or proceedings before, a civil Court for the recovery of a debt which was the subject of any proceedings under this Act, the time during which such proceedings were pending as well as the time taken for the obtaining of certified copies of the order of the board shall be excluded.

(2) The period during which proceedings under this Act have been pending including the actual period fixed in the agreement for payment of all the debts shall, in all suits filed or proceedings taken, in civil Courts to recover debts, be excluded from computation under S. 48 of the Code of Civil Procedure, 1908 (V of 1908), or under the Indian Limitation Act, 1908 (IX of 1908).

Members of the board deemed to be public servants.

28. The members of a board shall be deemed to be public servants within the meaning of the Indian Penal Code, 1860 (XLV of 1860).

Power to make rules.

29. (1) The [1][Provincial Government] may make rules to carry out all or any of the purposes of this Act and not inconsistent therewith.

(2) In particular and without prejudice to the generality of the foregoing power, they shall have power to make rules—

(*a*) with reference to all matters expressly required or allowed by this Act to be prescribed;

(*b*) regulating the procedure before a board;

(*c*) prescribing the charges to be made by a board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid;

(*d*) prescribing the records to be kept and the returns to be made by a board;

(*e*) prescribing the allowances, if any, to be paid to the chairman and members of a board;

(*f*) regulating the power of a board to summon parties and witnesses and the production of documents under S. 13 and the grant of expenses to witnesses; and

(*g*) prescribing the place at which and the manner in which an agreement shall be registered under sub-S. (2) of S. 14.

(3) All rules made under this Act shall be subject to the condition of the rules being made after previous publication.

(4) In making any rule, the [1][Provincial Government] may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees, and in case of a continuing breach with fine which may extend to ten rupees for every day during which the breach continues after the first breach.

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(1) These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Rules under the Madras Debt Conciliation Act, 1936.

NOTIFICATIONS

Fort St. George, 17th December, 1936 (G.O. No. 3692, Home), No. 924.—

In pursuance of sub-S. (3) of S. 1 of the Madras Debt Conciliation Act, 1936 (Madras Act XI of 1936), the Governor in Council is hereby pleased to appoint January the first, nineteen hundred and thirty-seven as the date on which the said Act shall come into force.

No. 925.—

In exercise of the powers conferred by S. 29 of the Madras Debt Conciliation Act, 1936 (Madras Act XI of 1936), the Governor in Council is hereby pleased to make the following rules :—

RULES.

1. (1) These rules may be called THE MADRAS DEBT CONCILIATION RULES, 1937.

(2) They shall come into force on the 1st January, 1937.

2. In these rules—

(*a*) "the Act" means the Madras Debt Conciliation Act, 1936 (Madras Act XI of 1936);

(*b*) "Board" means a Board established under the Act;

(*c*) "Collector" means the Collector of the district within whose jurisdiction the Board is established;

(*d*) "Government" means the Government of Madras ; and

(*e*) "section" means a section of the Act.

3. (1) The quorum necessary for the transaction of business at a meeting of a Board shall be two, of whom one shall be the Chairman.

(2) The Chairman shall preside at every meeting of the Board, and shall regulate the course of all business.

4. (1) If any member of a Board other than the Chairman is a party to, or personally interested in, any application before the Board, he shall withdraw from the Board during the hearing of such application and shall take no part in its determination.

(2) If the Chairman is a party to, or personally interested in, any application before the Board, the Chairman shall report such fact to the Board of Revenue through the Collector of the district if there is only one Board in the district or if there is more than one Board to the Collector concerned, and the Board of Revenue or the Collector, as the case may be, shall transfer the application to another Board for disposal.

5. (1) The headquarters of a Board shall be the headquarters of the officer who is its Chairman or if the Chairman is a non-official, such place as may be fixed by the Board of Revenue.

(2) The Board shall ordinarily sit for the transaction of its business at its headquarters, but may sit at such other place as may be fixed by its Chairman. The Chairman shall fix the time for each meeting. In fixing the place and time for meetings, the Chairman shall have regard to the convenience of the Board and of the parties.

(3) The Board may adjourn its proceedings as may be deemed desirable for the proper transaction of its business.

6. Applications under S. 4, notices under Ss. 8 and 10 and certificates under S. 18 shall be in such of the forms in Appendix I to these rules as may be applicable.

7. Every application under the Act shall be presented at the office of the Board, during office hours, by the applicant in person or by an agent authorized by him in writing, to the Chairman or, during his absence, to the person authorized by the Chairman to receive such application on his behalf.

8. If applications for the settlement of the debts of the same debtor are made to more than one Board, the Collector of the district, if the Boards are within a district, and the Board of Revenue, if they are in different districts, shall call for the applications from the different Boards and decide which Board can most conveniently deal with all such applications, and transfer for disposal by such Board all such applications presented to the other Boards.

Pending such decision by the Collector of the district or the Board of Revenue, as the case may be, no further proceedings shall be taken in respect of the applications by any of the Boards.

9. Every application under S. 4 shall be stamped with a Court-fee stamp of the value of twelve annas.

9-A. A party who makes an application to the Board for settlement of his claims or debts shall deposit with the Board the postage stamps necessary for sending notices by registered post as required by sub-S. (2) of S. 8 of the Act.

10. The proceedings of the Board shall be recorded in English.

11. In making an enquiry under the Act, the Board may examine orally any party, or any other person supposed to be acquainted with the matter under enquiry or any fact relevant thereto and the Chairman shall reduce to writing the substance of such examination.

Such party or other person shall be bound to answer truly all questions relating to such matter or fact put to him by the Board other than questions the answers to which would expose him to a criminal charge or to a penalty or forfeiture.

12. The written statements filed by parties and the substance of the examination of parties and other persons, reduced to writing under rule 11, shall form part of the record.

13. All certificates granted by the Board shall be signed by the Chairman and shall be dated and sealed with the seal of the Board.

13-A. An agreement referred to in sub-S. (1) of S. 14 which is not signed by the members of the Board shall be authenticated by the Chairman by signing and dating it and by affixing the seal of the Board thereto.

14. A copy of the notice under sub-S. (1) of S. 10 shall be served on each known creditor. A copy shall also be posted on the notice board of the Collector's office, of the taluk office in each of the taluks where the debtor has property and of the office of the Board.

A copy shall also be posted in a conspicuous place in the village where the debtor ordinarily resides and in each of the villages, in which any immovable property, in which the debtor has any saleable interest, is situated.

15. Every summons issued under the Act shall be in writing and shall require the person summoned to appear at a stated time and place and shall specify whether his attendance is required for the purpose of giving evidence, or to produce a document, or for both purposes, and any particular document, the production of which is required, shall be precisely specified.

16. Any person summoned merely to produce a document shall be deemed to have complied with the summons, if he causes such document to be produced, without attending personally to produce the same.

17. (1) The service of summons under the Act on any person may be effected—

(a) by giving or tendering it to such person ; or

(b) if such person is not found, by leaving it at his last known place of abode or business, or by giving or tendering it to some adult member of his family or his authorised agent ; or

(c) if the address of such person is known to the Board, by sending it to him by post registered ; or

(d) if none of the means aforesaid is available, by affixing it in some conspicuous part of his last known place of abode or business.

(2) When the serving officer delivers or tenders a copy of the summons to the person concerned personally or to an agent or other person on his behalf, such officer shall require the person to whom the copy is delivered or tendered to sign an acknowledgment of service endorsed on the original summons.

(3) The serving officer shall, in all cases in which the summons has been served, add or cause to be added to the original summons an endorsement or annexure stating the date when, and the manner in which, the summons was served and the name and address of the person (if any) identifying the person served, or his place of abode or business and witnessing the delivery, posting or tender of the summons.

(4) All processes issued by the Board shall be served through the agency of the revenue establishment.

18. When the person whose evidence is required is unable, from sickness or infirmity, to attend before the Board issuing the summons, or is a person whom by reason of rank or sex it may not be proper to summon, the Board issuing the summons may, of its own motion or on the application of the person whose evidence is required, dispense with his appearance, and order him to be examined by a person deputed by the Board for the purpose.

19. Where the person whose attendance is required is a public officer, or is the servant of a railway company or local authority, the officer issuing the summons may, if it appears that the summons may be most conveniently so served, send it by registered post pre-paid for acknowledgment for service on the person whose attendance is required, to the head of the office in which he is employed together with a copy to be retained by that person.

20. (1) A party who desires the attendance of a witness either to give evidence or produce a document shall deposit with the Board—

(a) in a Court-fees stamps, process fees in accordance with the scales prescribed in the Civil Rules of Practice and Circular Orders, and

(b) in cash, allowances for travelling to and attending at Court in accordance with the scales laid down in rule 50 of the Civil Rules of Practice and Circular Orders.

(2) If the party required to make such deposits fails to do so within 15 days from the date of his application for the issue of process such application shall be dismissed. But he may within one month of such dismissal apply to have the dismissal set aside and the Board may in its discretion restore the application and deal with it.

(3) When the Board causes the attendance of a witness of its own motion and not at the instance of a party, the Board shall pass such orders as it thinks fit as to the payment of expenses to the witness and as to the party or parties by whom such expenses are to be borne.

21. (1) The stamp duty on an agreement drawn up under sub-S. (2) of S. 14 shall be paid by the debtor.

(2) Every agreement made under sub-S. (1) of S. 14 shall be registered in the office of the Sub-Registrar within whose sub-district the head-quarters of the Chairman of the Board is situate.

(3) The cost of registering the agreement shall be paid by the creditors who are parties to it, the amount payable by each creditor being proportionate to the compounded debt stated to be payable to him under the agreement. If any creditor commits default in paying his share of such cost, it shall be recoverable from him as an arrear of land revenue.

22. Every application for a copy shall be addressed to the Chairman. The rules regarding grant of certified copies in Order No. 173 of the Standing Orders of the Board of Revenue as for the time being in force shall be followed in granting copies of the records maintained by a Board.

23. (1) The following registers and books shall be maintained by a Board :—

(*a*) Register of applications.

(*b*) Register of certificates.

(*c*) (i) Process register.

(ii) Nominal Roster of Process Servers.

(*d*) Diet-money register.

(*e*) Register of copy applications.

(*f*) Receipt book (in duplicate foils).

(*g*) Register of contingent expenditure.

(*h*) Cash book.

(*i*) Remittance register.

(*j*) Register of postage stamps.

These registers and books shall be maintained in the forms prescribed in Appendix II to these rules.

(2) After the close of each calendar year, the registers and books specified in sub-rule (1), after the entries relating to pending cases have been transcribed into new registers and books, and the records relating to completed proceedings of cases shall be transferred—

(*a*) if the head-quarters of the Board is at the district head-quarters, to the office of the Collector; and

(*b*) in other cases, to the office of the Revenue Divisional Officer within whose jurisdiction the head-quarters of the Board is situated.

(3) The registers, books and records aforesaid shall be preserved for the periods specified below against each :—

(*a*) Registers and books—6 years.

(*b*) Records relating to cases—

(i) in which certificates have been granted under S. 18 (1)—20 years; and

(ii) which have resulted in an agreement—3 years after the date of payment of the last instalment.

(*c*) Records relating to other cases—2 years.

24. Each Board shall submit through the Collector to the Board of Revenue, a monthly progress return in Form No. VI in Appendix I to these rules.

25. Each Board shall submit not later than the 1st August every year to the Collector for submission to the Board of Revenue an annual report on the working of the Act during the previous fasli year. Such report shall indicate—

(*i*) Progress of work and results achieved;

(*ii*) Difficulties experienced in working the Act;

(*iii*) Amendments, if any, that appear to be necessary to the Act or the rules; and

(*iv*) Such statistics or other information as may be prescribed, from time to time, by the Board of Revenue.

26. The Chairman or a member of the Board, if a non-official, shall be entitled to draw travelling allowance for any journey performed by him in connexion with his duties as such Chairman or member at the following rates :—

Journeys by rail—one second-class and one third-class fare.

Journeys by road—Annas four a mile.

Daily allowance for halts—Rupees three and annas eight.

The drawal of allowances will be subject to the conditions laid down in Part III of the Manual of Special Pay and Allowances.

27. The Chairman or a member of a Board, if an official, shall be entitled to draw for any journey, travelling allowance and halting allowance at rates to which he would be entitled by virtue of his official position.

28. The Collector shall be the controlling officer empowered to countersign the travelling allowance bills of the Chairman and members of a Board.

29. The Government may provide for each Board such ministerial and menial staff as it may from time to time require, and may regulate the conditions of their employment and fix the salaries and allowances payable to them.

30. In all administrative matters, the Board shall be subordinate to the Collector who shall be subject to the control of the Board of Revenue and the Government. The Collector shall appoint, punish and generally control the staff of the Board but may, with the concurrence of the Board of Revenue, delegate to the Chairman of a Board such of his powers under this rule except that of appointment, as he may see fit. But the Chairman of the Board shall be competent to appoint and punish the menial establishment.

31. The Collector shall inspect the Board's records at least once a year, but he may inspect them more frequently if he sees fit to do so. He shall submit a report to the Board of Revenue on the results of such inspection, once a year.

32. In every case in which a debtor or a creditor is a minor or a person of unsound mind, the procedure laid down in O. XXXII of the First Schedule to the Code of Civil Procedure, 1908, shall be applied.

33. (1) If a debtor or creditor who is a party to the proceedings before a Board dies, the Board shall, on an application made in that behalf, cause the legal representative of the deceased debtor or creditor to be made a party and shall continue the proceedings unless the Board considers for reasons to be recorded in writing that the proceedings should terminate.

(2) An application under sub-rule (1) shall be made to the Board within a period of 45 days from the date of death of the deceased debtor or creditor :

Provided that an application made after such period may be admitted when the applicant satisfied the Board that he had sufficient course for not making the application within such period.

(3) The termination of any proceedings under sub-rule (1) shall not preclude the legal representative of the deceased from making a fresh application under S. 4 of the Act.

(4) Where a question arises as to whether any person is or is not the legal representative of a deceased debtor or a deceased creditor such question shall be determined by the Board.

THE MADRAS DEBTORS' PROTECTION ACT, 1934 (VII OF 1935).

(As amended by Madras Act IV of 1936.)

[*6th March*, 1935.

An Act for the protection of certain classes of debtors in the Madras Presidency.

Whereas it is expedient to make provision for the protection of certain classes of debtors in the Presidency of Madras, and for that purpose to regulate the keeping of accounts by certain classes of creditors;

And whereas the previous sanction of the Governor-General has been obtained to the passing of this Act;

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE MADRAS DEBTORS' PROTECTION ACT, 1934.

(2) It extends to the whole of the Presidency of Madras.

(3) It shall come into force on such date as the [1][Provincial Government] may, by notification in the [2][Official Gazette], appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "bank" means a company carrying on the business or banking an—

(*a*) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India; or

(*b*) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature;

(2) "Company" means a company—

(*a*) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India; or

(*b*) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature;

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(1) These words were substituted for the words "Local Government" by para. 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(2) These words were substituted for the words "*Fort St. George Gazette*" by *ibid.*

and includes a Life Assurance company to which the Indian Life Assurance Companies Act, 1912 (VI of 1912), applies;

(3) "co-operative society" means a society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932);

(4) "Court" includes a Court acting in the exercise of insolvency jurisdiction;

(5) "creditor" means a person, including a pawn-broker who in the regular course of business advances a loan and includes the legal representative and the successor-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan;

(6) "interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a creditor for or on account of cost, charges, or expenses, but, save as aforesaid, includes any amount, by whatsoever name called, in excess of the principal paid or payable to a creditor in consideration of or otherwise in respect of a loan;

(7) "loan" means an advance of money or in kind at interest, being for a sum, or being of a value, of less than five hundred rupees at a time in any one transaction, and includes any transaction which the Court finds in substance to amount to such an advance, but does not include—

(*i*) a deposit of money or other property in a Government Post Office Savings Bank, or in a bank, in a company or with a co-operative society;

(*ii*) an advance made by a bank, a company or a co-operative society;

(*iii*) an advance made by Government or by any person authorised by Government to make advances in their behalf, or by any local authority;

(*iv*) an advance made by any person *bona fide* carrying on any business, not having for its primary object the lending of money, if such loan is advanced in the regular course of such business;

(*v*) an advance made by a landlord to his tenant by a lessor to his lessee, by one partner in cultivation or co-sharer to another for the purpose of carrying on agriculture;

(*vi*) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 (XXVI of 1881), other than a promissory note;

(8) "pawn-broker" means a person who carries on the business of taking goods and chattels in pawn for a loan;

(9) "pawner" means a person delivering an article for pawn to a pawn-broker;

(10) "prescribed" means prescribed by rules made under this Act; and

(11) "principal" means in relation to a loan the amount actually lent to the debtor.

Duty of creditor to maintain accounts and to give receipts.

3. (1) Every creditor shall—

(*a*) regularly record and maintain or cause to be recorded and maintained, an account showing for each debtor separately—

(i) the date of the loan, the amount of the principal of the loan, and the rate per cent. per annum of interest charged on the loan; and

(ii) the amount of every payment received by the creditor in respect of the loan, and the date of such payment;

(*b*) give to the debtor or his agent, a receipt for every sum paid by him, duly signed and, if necessary, stamped at the time of such payment, and

(*c*) on requisition in writing made by the debtor, furnish to the debtor, or, if he so requires, to any person mentioned by him in that behalf in his requisition, a statement of account signed by himself or his agent showing the particulars referred to in clause (*a*) and also the amount which remains outstanding on account of the principal and of interest and charge such sum as the [1][Provincial Government] may prescribe as fee therefor.

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in cl. (*a*) of sub-S. (1) certified in such manner as may be prescribed, shall be admissible in evidence in the same manner and to the same extent as the original account.

(3) A person to whom a statement of account has been furnished under cl. (*c*) of sub-S. (1) and who fails to object to the correctness of the account shall not by such failure alone be deemed to have admitted the correctness of such account.

Additional accounts to be maintained by pawnbrokers.

4. (1) Every pawnbroker shall regularly record and maintain an account in which, in addition to the particulars referred to in clause (*a*) of sub-S. (1) of S. 3, he shall record or cause to be recorded—

(*a*) a full and detailed description of the article or of each of the articles taken in pawn,

(*b*) the time agreed upon for the redemption of the pawn, and

(1) These words were substituted for the words "Local Government" by para 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(c) the name of the pawner and, where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof.

(2) A copy of the entries in such account shall be delivered by the pawnbroker to the pawner at the time of the pawn on tender of such sum as the [1][Provincial Government] may prescribe as the charge therefor.

Figures in accounts and receipts to be in Arabic numerals.

5. In the receipt to be given under clause (b) of sub-S. (1) of S. 3, in the statement of account to be furnished under clause (c) of that sub-section and in the copy of the entries to be delivered under sub-S. (2) of S. 4, the figures shall be entered only in Arabic numerals.

Penalty for non-compliance with sections 3 and 4.

6. (1) In any suit or proceeding relating to a loan, if the Court finds that a creditor has not maintained an account as required by clause (a) of sub-S. (1) of S. 3 or by sub-S. (1) of S. 4, he shall not be allowed his costs.

(2) If a creditor fails to give to the debtor or his agent a receipt as required by clause (b) of sub-S. (1) of S. 3 or to furnish, on a requisition made under clause (c) of that sub-section, a statement of account as required therein within one month after such requisition has been made, or if a pawnbroker fails to deliver to the pawner, a copy of entries as required by sub-S. (2) of S. 4, he shall not be entitled to any interest for the period of the default.

Presumption in the case of certain loans.

6-A. (1) If in any suit or proceeding relating to a loan advanced after the commencement of the Madras Debtors' Protection (Amendment) Act, 1935, it is found that the interest charged exceeds, in the case of a secured loan, nine per cent. per annum simple interest and in the case of an unsecured loan, fifteen per cent. per annum simple interest, the Court shall, until the contrary is proved, presume for the purposes of Ss. 3 and 4 of the Usurious Loans Act, 1918 (X of 1918), that the interest charged is excessive and that the transaction was, as between the parties thereto, substantially unfair.

Explanation.—In the case of any loan so advanced, if compound interest is charged and the amount claimed by the creditor by way of such interest until the date of the institution of the suit or proceeding for the recovery of the loan exceeds the amount of simple interest calculated at the rate of nine per cent. per annum or fifteen per cent. per annum, as the case may be, the Court shall draw the presumption referred to in this sub-section until the contrary is proved.

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(1) These words were substituted for the words "Local Government" by para. 4 (1) of the Government of India (Adaptation of Indian Laws). Order, 1937.

(2) The provisions contained in sub-S. (1) shall be without prejudice to the powers of the Court under Ss. 3 and 4 of the Usurious Loans Act, 1918 (X of 1918), in cases where the Court has reason to believe that the interest charged, though not exceeding nine per cent. per annum simple interest or fifteen per cent. per annum simple interest, as the case may be, is excessive and that the transaction was, as between the parties thereto, substantially unfair.

Savings.

7. Nothing contained in this Act shall apply to any loan advanced before the commencement of this Act.

Rules.

8. (1) The [1][Provincial Government] may make rules not inconsistent with this Act for the purpose of carrying out all or any of its purposes.

(2) In particular and without prejudice to the generality of the foregoing power the [1] [Provincial Government] may make rules prescribing—

(*a*) the sum which may be charged as fee for a statement of account, furnished under clause (*c*) of sub-S. (1) of S. 3;

(*b*) the manner in which a copy of the account shall be certified for the purpose of sub-S. (2) of S. 3; and

(*c*) the sum which may be charged for a copy of the entries in a pawnbroker's account, to be delivered by the pawnbroker to the pawner under sub-S. (2) of S. 4.

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(1) These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Rules under the Madras Debtors' Protection Act, 1934.

Fort St. George Gazette, dated 24th December, 1935, Part I, page 1680.

In exercise of the powers conferred by S. 8 of the Madras Debtors' Protection Act, 1934 (Madras Act VII of 1935), the Governor in Council is hereby pleased to make the following rules :—

1. (1) These rules may be called THE MADRAS DEBTORS' PROTECTION RULES, 1936.

(2) They shall come into force on and from the 15th January, 1936.

2. In these rules, unless there is anything repugnant in the subject or context, 'the Act' means the Madras Debtors' Protection Act, 1934.

3. (1) Every creditor shall keep a separate account in respect of each loan,

(2) The name and address of the debtor, and in the case of joint-debtors. of each joint debtor shall be entered at the head of the account.

(3) Every entry in an account shall be dated with the date of the transaction to which it relates and shall, as far as possible, be made on such date.

(4) The account shall show the balance on account of the principal and interest outstanding against a debtor on the 30th June and 31st December of every year and shall also show the balance outstanding on the date of any statement of account prepared in accordance with clause (*c*) of sub-S. (1) of S. 3 of the Act.

4. The statement of account to be furnished to the debtor as well as the receipt to be given to him shall be in English or in the chief vernacular language of the locality.

5. (1) (*a*) The statement of account shall be sent to the debtor by registered post, acknowledgment due, to the address given in the requisition made by the debtor.

(*b*) In the case of joint-debtors, the statement of account shall, in the absence of an agreement to the contrary, be sent in the manner laid down in clause (*a*) to the joint-debtor named first at the head of the account.

(2) Notwithstanding anything contained in sub-rule (1), where the debtor or in the case of joint-debtors, the joint-debtor named first at the head of the account agrees in writing to the statement being delivered personally, it shall not be necessary to send it by registered post.

(3) When a debtor or a joint-debtor takes personal delivery of the statement of account, he shall acknowledge receipt of the same in writing. The debtor, or the joint-debtor, as the case may be, shall sign the acknowledgment, or if he is illiterate, affix his thumb impression thereto.

(4) If the statement of account is sent by registered post, the production of the postal receipt and acknowledgment shall be sufficient proof of the sending of such statement.

(5) The postal registration and acknowledgment charges incurred under sub-rule (1) shall be entered in the account and shall be recoverable by the creditor as if such charges were included in the loan, but no interest shall be charged thereon.

(6) (*a*) The fee which may be charged by a creditor for a statement of account furnished by him under clause (*c*) of sub-S. (1) of S. 3 of the Act shall be as follows :—

	Rs.	A.	P.
(*i*) If the amount of the loan does not exceed Rs. 50 ..	0	1	0
(*ii*) If the amount of the loan exceeds Rs. 50 but does not exceed Rs. 100	0	2	0

	Rs.	A.	P.
(*iii*) If the amount of the loan exceeds Rs. 100 but does not exceed Rs. 300	0	3	0
(*iv*) If the amount of the loan exceeds Rs. 300 but is less than Rs. 500	0	4	0

Explanation.—The fee shall be charged separately in respect of each loan and each requisition. Thus the fee for the statements relating to two separate loans of Rs. 120 and of Rs. 360 will be seven annas.

(*b*) The fee shall be recoverable by the creditor as it were included in the loan, but no interest shall be charged thereon.

6. Where there are two or more joint-debtors, the creditor shall, in the absence of any agreement to the contrary, give the receipt to the joint-debtor named first at the head of the account or to his agent.

7. (1) No copy of an account shall be admissible in evidence under sub-S. (2) of S. 3 of the Act unless it contains two certificates at the foot, the first by the creditor himself or his agent, and the second by some other person who has compared the copy with the original.

(2) The certificate of the creditor or his agent under sub-rule (1) shall be in the following form:—

"I certify that the above is a true copy of the account maintained under S. 3 (1) (*a*) of the Madras Debtors' Protection Act, 1934, for the loan of Rs............taken by............on............(date) and that there are no alterations or erasures in the account (except the following)."

Signature of creditor or his agent.

(3) The certificate of a person other than the creditor or his agent shall be in the following form:—

"I certify that I have compared the above copy with the original account in the custody of the creditor, and found it to be correct."

Signature

Designation

Address."

8. The sum which may be charged by a pawnbroker for a copy of the entries in his account, delivered by him to the pawner under sub-S. (2) of S. 4 of the Act shall be one anna.

THE USURIOUS LOANS ACT (X OF 1918)

(As amended by Indian Act XXVIII of 1926 and Madras Act of 1936).

[22*nd March*, 1918.

An Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind.

WHEREAS it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind;

It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE USURIOUS LOANS ACT, 1918.

(2) It extends to the whole of British India, including British Baluchistan.

(3) The [1][Provincial Government] may, by notification in the Official Gazette, direct that it shall not apply to any area, class of persons, or class of transactions which it may specify in its notification.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Interest" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

(2) "Loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of the Court, in substance a loan.

(3) "Suit to which this Act applies" means any suit—

(*a*) for the recovery of a loan made after the commencement of this Act; or

(*b*) for the enforcement of any security taken or any agreement whether by way of settlement of account or otherwise made, after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act; or

(*c*) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act.

(1) These words were substituted for the words "Local Government" by para. 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Reopening of transactions.

3. (1) Notwithstanding anything in the Usury Laws Repeal Act, 1855, where, in any suit to which this Act applies, whether heard *ex parte* or otherwise the Court *has reason to believe that the transaction was as between the parties thereto, substantially unfair, the Court shall exercise one or more of the following powers, namely—*

(i) re-open the transaction, take an account between the parties and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement, purporting to close previous dealings, and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part, or revise or alter any security given or agreement made in respect of any loan and, if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just:

Provided that in the exercise of these powers, the Court shall not—

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than *twelve* years from the date of the transaction;

(ii) do anything which affects any decrees of a Court.

EXPLANATION I.—*If the interest is excessive, the Court shall presume that the transaction was substantially unfair; but such presumption may be rebutted by proof of special circumstances justifying the rate of interest.*

Explanation II.—In the case of a suit brought on a series of transactions, the expression "the transaction" means for the purposes of proviso (*i*), the first of such transactions.

(2) (*a*) In this section "*excessive*" means in excess of that which the Court deems to be reasonable, having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

(*b*) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction:

Provided that in the case of loans to agriculturists if compound interest is charged the Court shall presume that the interest is excessive.

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan, or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

(3) This section shall apply to any suit, whatever its form may be, if such is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan, *or for the redemption of any such security.*

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was *bona fide*, and that he had, at the time of such transfer, no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

For the purposes of this sub-section, the word 'notice' shall have the same meaning as is ascribed to it in S. 4 of the Transfer of Property Act, 1882.

(5) Nothing in this section shall be construed as derogating from the existing powers and jurisdiction of any Court.

Insolvency proceedings.

4. On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings, the Court may exercise the like powers as may be exercised under S. 3 by a Court in a suit to which this Act applies.

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